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JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 204

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

MONTGOMERY WARD & CO., INC., RESPONDENT.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BATAVIA TIMES LAW PRINTERS
BATAVIA, N. Y.

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Chronological List of Relevant Docket Entries.

MONTGOMERY WARD & CO., INCORPORATED
3-CA-825

9.10.54 Charge filed.
10. 5.54 Additional charge filed.
11.26.54 First amended charge filed.
11.26.54 Complaint and notice of hearing issued.
12. 6.54 Order rescheduling hearing from December 14, 1954, to January 11, 1955, issued by the Regional Director.
12. 8.54 Respondent's request for statement of particulars received.
12.14.54 Trial Examiner's order on Respondent's request for statement of particulars dated.
12.20.54 General Counsel's statement of particulars dated.
12.23.54 Respondent's letter addressed to Board Attorney Cavers requesting certain information pertaining to General Counsel's statement of particulars, dated.
12.28.54 Board Attorney Cavers' letter addressed to Respondent setting forth certain information relating to General Counsel's statement of particulars, dated.
12.29.54 Respondent's answer sworn to.
1.11.54 Hearing opened.
1.14.54 Hearing closed.
4.18.55 Trial Examiner's Intermediate Report and Recommended Order issued.
4.18.55 Order transferring case to the Board.
5.23.55 Respondent's request for permission to argue orally before the Board received.

General Counsel's Exhibit 2.

5.23.55 Respondent's exceptions received.
5.23.55 General Counsel's exceptions received.
2.29.56 Decision and Order issued.

General Counsel's Exhibit 2.

Form NLRB-502
(7-52)

Form Approved.
Budget Bureau No. 64-R002.7.

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

PETITION

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any national or international of which it is an affiliate of constituent unit have complied with Section 9 (*f*), (*g*), and (*h*) of the National Labor Relations Act.

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering item accordingly.

ATTACHMENTS REQUIRED.—Except when this Petition is filed by an employer under Section 9 (c) (1) (B) of the act, there must be submitted with the Petition proof of interest in the form of dated authorization or membership application cards, or other documentary evidence signed by employees, together with an alphabetical list of their names.

DO NOT WRITE IN THIS SPACE

Case No.
3-RC-1439

Date Filed
July 16, 1954

Compliance Status Checked By:
BR

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. Purpose of this Petition (*Check only the one box which is appropriate*)
   A. [xx] RC—CERTIFICATION OF REPRESENTATIVES (INDIVIDUAL, GROUP, LABOR ORGANIZATION).—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to Section 9 (a) and (c) of the act.
   B. [ ] RM—REPRESENTATION (EMPLOYER).— One or more individuals or labor organizations have presented a claim to Petitioner

General Counsel's Exhibit 2.

to be recognized as the representative of employees of Petitioner as defined in Section 9 (a) of the act.

C. [ ] RD—DECERTIFICATION.—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in Section 9 (a) of the act.

D. [ ] UD—WITHDRAWAL OF UNION SHOP AUTHORITY.—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

2. Name of Employer

Montgomery Ward & Co.

3. Address(es) of Establishment(s) Involved (Street and number, city, zone, and State)

36-38 Main Street, Binghamton, New York.

4a. Type of Establishment (Factory, Mine, Wholesaler, Etc.)

Department Store.

4b. Identify Principal Product or Service

Retail Trade.

5. Description of Unit Involved

INCLUDED

All employees of the employer in its Binghamton, New York store including sales people, department managers, janitors, elevator operators, office employees, service department employees, maintenance employees, shipping and receiving department employees, display department employees, PBX operators, catalogue department employees, merchandise preparation employees, credit department employees, regular part-time employees.

EXCLUDED

Manager, Assistant Manager, Credit Manager, Seasonal part-time employees.

6a. Number of Employees in Unit

81.

6b. Is this Petition Supported by 30% or more of the Employees in the Unit?

[xx] Yes [ ] No

(If you have checked box 1A or 1C above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. [ ] Request for recognition as Bargaining Representative was made on July 14, 1954 and Employer declined recognition on or about (Month, day, year)

No Reply Received *(If no reply received, so state)* (Month, day, year)

General Counsel's Exhibit 2.

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (*If there is none, so state*)

None.

NAME	AFFILIATION	ADDRESS	DATE OF RECOGNITION OR CERTIFICATION (Month, day, year)

9. Date of Expiration of Current Contract, if any

..... (Month, day, year)

(*Fill in Item 10 Only if You Have Checked Box 1D (UD) Above*)

10. Date of Execution of Agreement Granting Union Shop

..... (Month, day, year)

11. Parties or Organizations Which Have Claimed Recognition as Representatives, and other Unions Interested in the Employees Described in Item 5 Above, But if None, so State

None.

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is Filed by Employer)

12. Declaration

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Petitioner

Retail Clerks International Association, A. F. of L., Local 1687.

Affiliation, if any

Retail Clerks International Association, A. F. of L.

By

Fred Blair. Secretary-Treasurer.

(Signature of representative or person filing petition) (Title, if any)

Address

315 Miners Nat'l Bank Bldg., Wilkes-Barre, Pa.

(Street and number, city, zone, and State)

Valley 4-4579.

(Telephone number)

Willfully false statements on this Petition can be punished by fine and imprisonment (U. S. Code, Title 18, Section 1001)

General Counsel's Exhibit 3.

NLRB 652
(2-53)

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION

(RC and RM cases)

The undersigned labor organization(s) (herein called the union(s)) claim(s) to represent employees of the undersigned employer (herein called the employer), and the undersigned parties desire that the question concerning the representation of said employees which exists by virtue of said claim shall be resolved by an election by secret ballot. Therefore, the said parties, subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. SECRET BALLOT—An election by secret ballot shall be conducted under the supervision of the Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by (one of) the Union(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board.

2. ELIGIBLE VOTERS. The eligible voters shall be those employees included within the Unit described below,

who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, but *excluding* any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election and any employees on strike who are not entitled to reinstatement. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. NOTICES OF ELECTION—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

General Counsel's Exhibit 3.

5. POST-ELECTION AND RUN-OFF PROCEDURE—All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

6. RECORD—The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

7. COMMERCE The Employer is engaged in commerce within the meaning of Section 2 (6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

Montgomery Ward Company operates stores throughout the country. Their retail store at Binghamton, N. Y. is the only one involved in this proceeding. Sales of this store for the fiscal year 1953 were in excess of $1,000,000., of which more than 90% were within the State of New York. Purchases by the store in 1953 were in excess of $1,000,000., approximately 35% of which were made outside the State of New York. The Company concedes it is engaged in interstate commerce within the terms of the National Labor Relations Act.

(Insert commerce facts)

8. NAMES ON BALLOT—In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated

General Counsel's Exhibit 3.

below and in the order enumerated below, reading from left to right on the ballot:

First
Second
Third
Fourth

9. PAYROLL PERIOD FOR ELIGIBILITY—Payroll period ending August 11, 1954.

10. DATE, HOURS, AND PLACE OF ELECTION—August 17, 1954. 7:45 AM to 9:30 AM.

On the first floor near the employees' entrance of the Company's store.

11. THE APPROPRIATE COLLECTIVE BARGAINING UNIT—

All employees of Montgomery Ward Binghamton, N. Y. retail store, excluding the Manager, Assistant Manager, Guards, Professional Employees, and Supervisors as defined in the Act.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

Employer
Montgomery Ward & Co., Incorporated.

Address
619 West Chicago Ave., Chicago, Ill.

By *(Name and Title)*
Charles J. Barnhill Labor Relations Department.

Date Executed
August 5, 1954.

General Counsel's Exhibit 3.

RECOMMENDED

Signature
THOMAS J. WALSH,
Field Examiner, National Labor Relations Board.

APPROVED

Signature
MERLE D. VINCENT, JR.,
J I
Regional Director, National Labor Relations Board.
8/9/54.
Date

Name of Organization
Retail Clerks International Association, AFL Local 1687.

Address
315 Miners National Bank Bldg., Wilkes-Barre, Penna.

By *(Name and Title)*
Fred Blair, Secretary-Treasurer.

Name of Organization
.....

Address
.....

By *(Name and Title)*
.....

Name of Organization
.....

Address
.....

By *(Name and Title)*
.....

CASE NO. 3-RC-1439.

General Counsel's Exhibit 4.

Name	*Job Class*	*Male or Female*
Andrews, Frances	Div. 71 D. H.	F
Avery, Otho	Shipper	M
Begeal, Hugh	Div. 42 D. H.	M
Boone, Ethloweine	Div. 16 D. H.	F
Bosley, Jean	Cashier Asst.	F
Brewer, Ruth	Unit Control D. H.	F
Bright, Wesley	Comm. Appl.	M
Brown, Harry	Service man	M
Buckler, Joseph	Div. 81—Outside Salesman	M
Campbell, Era	Cashier	F
Carr, Anna	Div. 32 Extra	F
Carpenter, Betty	P. B. X.	F
Clark, Carlton	Service	M
Clarke, Myrle	Time Payment Clerk	F
Coffey, Theresa	Div. 86 D. H.	F
Cohen, Louis	Time Payment Collector	M
Cook, Sherman	Div. 81-74 D. H.	M
DeAngelus, Frank	Div. 24 Clerk	M
Dickinson, Daniel	Div. 74-81 Outside Salesman	M
Dino, William	Div. 60 Clerk	M
Du Four, Leonard	Appliances D. H.	M
Eells, Gerald	Div. 84 Clerk	M
Ellsworth, Anne	Catalog	F
Felker, Frank	Div. 87 D. H.	M
Foley, Betty	Catalog D. H.	F
Gransbury, Thomas	Display	M
Groszek, Henry	Div. 59-61-64 Res.	M
Gulino, Celestine	Stock Records	F
Hanrahan, Jane	Time Payment Clerk	F
Hanyon, Leon	Janitor	M
Harrison, Catherine	Div. 18 D. H.	F

General Counsel's Exhibit 4.

Name	*Job Class*	*Male or Female*
Holmes, Pauline	Fashions extra	F
Hurst, Agnes	Div. 32 D. H.	F
Jagger Kenneth	Service Mgr.	F
Jenkins, Claudia	Catalog	F
Kaidon, Helen	Div. 86 Res.	F
Knapp, Mildred	Marker	F
Knowlton, Willard	Appliance Salesman	M
LaBarre, Dorothy	Stock Records	F
Lafferre, Regina	Time Payment Clerk	F
Marold, Dorothy	Div. 30 D. H.	F
McGraw, Joseph	Div. 75 D. H.	M
McTigue, Irene	Div. 33-34 D. H.	F
McMahon, Louis	Appliance Salesman	M
Mitchell, Allan	Div. 81—Second Man	M
Moore, Byron	Div. 83-84 extra	M
Moore, Shirley	Div. 35-39 extra	F
Moran, Frank	Div. 24 D. H.	M
O'Brien, Mary	Alteration	F
Oliver, Elmer	Rec. Room	M
Pandak, Stella	Fashions D. H.	F
Parkes, Dorothy	Time Payment Clerk	F
Parshall, Dorothy	Unit Control	F
Prutisto, Donald	Div. 83-84 D. H.	M
Purves, Emily	Div. 11 D. H.	F
Randó, Anna	D. H. Cashier	F
Robinson, Gordon	Warehouse	M
Rodgers, Horace	Div. 83-84 Res.	M
Romano, Dominic	D. H. Rec. Clerk	M
Scott, Pollie	Credit Mgr.	F
Schadel, George	Div. 66 D. H.	M
Shondy, Bruce	Div. 60 D. H.	M

General Counsel's Exhibit 4.

Name	*Job Class*	*Male or Female*
Siedlecki, John	Div. 59-61-64	M
Slocum, Ronald	Stock Room	M
Simek, Helen	Service Clerk	F
Smith, Joyce	Cash Office	F
Smith, Shirley	Office extra	F
Stoddard, Gertrude	Time Payment Clerk	F
Summers, Emerson	Div. 72-73 D. H.	M
Taylor, Ruth	Div. 31 D. H.	F
Thomas, Hilda	Div. 10 D. H.	F
Treible, Elsie	Div. 14 D. H.	F
Van Schaick Betty	Time Payment Clerk	F
Vosbury, Doris	Time Payment Clerk	F
Wells, Francis	Stock Room	M
White, Charles	D. H. 59-61-64	M
White, T. Robert	D. H. 35-39	M
Witter, Irene	Div. 29 Res.	F
Wormouth, Dolores	Marker	F
Neylan, Thomas P.	Extra Clerk	
Julian, Hildam	Catalog	
Kelly, Margaret		
Stewart, Robert E.		

/s/ FRED BLAIR,
/s/ C. A. RUMBLE.

General Counsel's Exhibit 9.

NLRB-760
(9-48)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

—o—

In the Matter
of
MONTGOMERY WARD & CO., INCORPORATED,
and
RETAIL CLERKS INTERNATIONAL ASSOCIATION,
A. F. L., LOCAL 1687

Case No. 3-RC-1439
Date issued August 17, 1954
Type of election (Check one):
[ ] Consent
[x] Stipulated
[ ] Board ordered

—o—

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 81
2. Void ballots 0
3. Votes cast for Local 1687, Retail Clerks Int'l. Assn. AFL 49
4. Votes cast for .....
5. Votes cast for .....

General Counsel's Exhibit 9.

6. Votes cast against participating labor organization(s) 13
7. Valid votes counted (sum of 3, 4, 5, and 6) 62
8. Challenged ballots 4
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 66
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes has been cast for Local 1687, Retail Clerks Int'l. Assn. AFL

For the Regional Director
THOMAS J. WALSH

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For MONTGOMERY WARD & CO., INCORPORATED
FRANK MORAN

For RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL, LOCAL 1687
AGNES HURST

For .....

For .....

General Counsel's Exhibit 14.

July 24, 1954
Salisbury, Maryland

Civil Service Commission
Albany, New York

Gentlemen:

This will advise that I have known Mrs. Gladys Witter since December 1948 until present time.

During that time I have always found her to be honest and industrious and interested in her work, and considered her a satisfactory employee.

I am pleased to recommend her for any position you feel she is capable of handling. If there are any further questions, I will be pleased to answer.

G. R. ORMON,
Store Manager
Montgomery Ward & Co.

P. S. She worked for me from December 1948 until 1952 at which time I left Binghamton, New York Store.

Respondent's Exhibit 80.

BINGHAMTON, N. Y.

DIVISION 87 NET SALES BY MONTH

Spring 1953			*Fall 1953*		
Feb	2042	53.5	Aug	1679	13.3 cr
Mar	5096	70.4	Sep	736	64.9 cr
Apr	10388	42.6	Oct	1582	3.9
May	10102	7.3 cr	Nov	1448	2.9 cr
Jun	7167	3.7 cr	Dec	271	75.8 cr
Jul	3373	13.5	Jan	1179	221.3
Total	38168	15.9	Total	6895	19.2 cr

Spring 1954			*Fall 1954*		
Feb.	195	90.5 cr	Aug.	1247	25.7 cr
Mar.	2348	53.9 cr	Sept.	447	39.3 cr
Apr.	6678	35.7 cr	Oct.	1295	18.1 cr
May	8806	12.8 cr	Nov.	733	49.4 cr
June	5135	28.4 cr			
July	2085	38.2 cr	Total	3722	
Total	25247	33.9 cr			

Season to date thru November 1954—31.6 cr

STORE MANAGER AND DISTRICT MANAGER

D STORE BY DISTRICT MANAGER STORE Binghamton

Page 5

Div.	Department Head	Length of Service This Div.	Length of Service Company	Month of MARCH 1954 % Sales Increase Period To Date Div.	% Sales Increase Period To Date Dist.	% Prev. Mo. Sell. Cost	Over All Rating	Action
10-11 14-15	PANDAK, S.	7/16/51	7/1/44	(3.8) (3.2) (2.2)	(6.5) (7.2) (4.3)	11.3	3	
16-18	BOONE, E.	1/12/54	1/12/54	(19.2) (19.2)	(6.3) (6.3)	11.5	New	Double Pos.
71	ANDREWS, F.	7/19/53	5/25/53	(4.8)	(4.4)	7.3	2	
20-30	MARQLD, D.	2/1/54	2/1/54	(6.8)	(4.0)	14.4	New	
24	MORAN, F.	2/1/49	10/12/44	(4.4)	(10.4)	17.9	3+	
31-36	TAYLOR, R.	6/15/49	9/18/44	(1.7)	(2.5) (11.8)	8.2	2+	
32	HURST, A.	10/19/49	9/26/44	(9.3)	(6.0)	9.3	2+	
33-34	McTIGUE, I.	10/12/53	5/9/49	1.9 (10.4)	3.1 (12.5)	17.3	2+	
35-39	WHITE, T.	3/15/54	7/22/44	(2.9) (2.9)	(10.2) (14.0)	16.1	2+	
42	SHOUDY, B.	2/1/54	9/11/44	(1.0)	(7.8)	7.7	2 New	
60	FIRENZE, V.	1/15/54	5/11/53	1.9 (9.4)	(5.5) (9.0)	6.5	2+	
75-76	McGRAW, J.	5/3/50	10/19/44	(10.2) (10.2)	4.7 (14.3)	17.9	3	
83-84	PRUTISTO, D.	10/51	8/30/44	(2.2) (2.2)	(.9) (12.2)	10.4	2+	
86	COFFEY, T.	6/33	6/33	(5.1)	(8.9)	14.1	3	
87	FELKER, F.	5/44	5/44	(9.4)	(20.0)	16.7	2	REPLACE
54-64	WHITE, C.	9/10/46	7/10/46	(11.8) (11.8)	(6.5) (6.5)	18.8	/	
65-69	PAVLIK, M.	3/30/49	7/1/46	(10.0) (10.0)	(12.1) (12.1)	22.1		
66	SCHADEL, G.	7/14/52	9/40	(.2)	(10.2)	6.1	2-	

Div.	Department Head	Length of Service This Div.	Length of Service Company	Month of SEPTEMBER 1954 % Sales Increase Period To Date Div.	% Sales Increase Period To Date Dist.	% Prev. Mo. Sell. Cost	Over All Rating	Action
10-11 14-15	PANDAK, S.	7/16/51	7/1/44	(3.8) (3.2) (2.2)	(6.5) (7.2) (4.3)	11.0	3	
16-18	BOONE, E.	1/12/54	1/12/54	(2.1) (6.8)	(4.6) (9.5)	7.0		
71	ANDREWS, F.	7/19/53	5/25/53	(7.0)	(11.8)	6.3		
20-30	MARQLD, D.	2/1/54	2/1/54	(3.6) (18.5)	(10.4) (11.4)	7.8		
24	MORAN, F.	2/1/49	10/12/44	(2.1)	(12.8)	12.8		
31-36	TAYLOR, R.	6/15/49	9/18/44	(2.1) 30.2	(11.2) (3.7)	6.5		
32	HURST, A.	10/19/49	9/26/44	(12.7)	(8.9)	9.7		
33-34	McTIGUE, I.	10/12/53	5/9/49	(15.2) (12.0)	(13.2) (9.9)	7.0		
35-39	WHITE, T.	3/15/54	7/22/44	(36.2) (46.1)	(13.8) (26.6)	11.8		
42	SHOUDY, B.	2/1/54	9/11/44	(9.4)	(18.5)	12.2	3	
60	FIRENZE, V.	1/15/54	5/11/53	11.8 (22.7)	13.5 (22.7)	14.3		
75-76	McGRAW, J.	5/3/50	10/19/44	(18.1) (20.8)	(31.2) (40)	7.9		
83-84	PRUTISTO, D.	10/51	8/30/44	(5.4) (22.7)	(1.9) (15.5)	9.4	3	
86	COFFEY, T.	6/33	6/33	(26.0)	(14.9)	8.2		
87								
54-64	SIEDLECKI,	9/10/46	7/10/46	(26.2) (31.0) (26.4)	(20.2) (14.5) (20.3)	5.8		
65-69	DUFOUR, L.	3/15/54	5/20/54	(23.1) (24.9) (26.4)	(21.8) (24.5) (20.3)	14.9		
66	SCHADEL, G.	7/14/52	9/40	(7.4)	(19.8)	4.1	2+	

Div.	Department Head	Length of Service This Div.	Length of Service Company	Month of SEPTEMBER 19 % Sales Increase Period To Date Div.	% Sales Increase Period To Date Dist.	% Prev. Mo. Sell. Cost	Over All Rating	Action
10-11 14-15	PANDAK, S.	7/16/51	7/1/44	(3.8) (3.2) (2.2)	(6.5) (7.2) (4.3)	11.0	3	
16-18	BOONE, E.	1/12/54	1/12/54	(2.1) (6.8)	(4.6) (9.5)	7.0		
71	ANDREWS, F.	7/19/53	5/25/53	(7.0)	(11.8)	6.3		
20-30	MARQLD, D.	2/1/54	2/1/54	(3.6) (18.5)	(10.4) (11.4)	7.8		
24	MORAN, F.	2/1/49	10/12/44	(2.1)	(12.8)	12.8		
31-36	TAYLOR, R.	6/15/49	9/18/44	(2.1) 30.2	(11.2) (3.7)	6.5		
32	HURST, A.	10/19/49	9/26/44	(12.7)	(8.9)	9.7		
33-34	McTIGUE, I.	10/12/53	5/9/49	(15.2) (12.0)	(13.2) (9.9)	7.0		
35-39	WHITE, T.	3/15/54	7/22/44	(36.2) (46.1)	(13.8) (26.6)	11.8		
42	SHOUDY, B.	2/1/54	9/11/44	(9.4)	(18.5)	12.2	3	
60	FIRENZE, V.	1/15/54	5/11/53	11.8 (22.7)	13.5 (22.7)	14.3		
75-76	McGRAW, J.	5/3/50	10/19/44	(18.1) (20.8)	(31.2) (40)	7.9		
83-84	PRUTISTO, D.	10/51	8/30/44	(5.4) (22.7)	(1.9) (15.5)	9.4	3	
86	COFFEY, T.	6/33	6/33	(26.0)	(14.9)	8.2		
87								
54-64	SIEDLECKI,	9/10/46	7/10/46	(26.2) (31.0) (26.4)	(20.2) (14.5) (20.3)	5.8		
65-69	DUFOUR, L.	3/15/54	5/20/54	(23.1) (24.9) (26.4)	(21.8) (24.5) (20.3)	14.9		
66	SCHADEL, G.	7/14/52	9/40	(7.4)	(19.8)	4.1	2+	

Note:

Page 16 (10 sheets) is
on card 2.

Respondent's Exhibit 82.

RETAIL STORE EMPLOYEE APPRAISAL

PLACE IN EMPLOYEE'S PERSONNEL ENVELOPE

Name of Employee Felker, F. | STORE STAMP

Position D. H., Div. 87

12/28/53
(Date of Appraisal)

5- -42
(Date Employed by Wards)

5- -42
(Date Employed in Present Job)

APPRAISAL FACTORS FOR ALL JOBS

Factor	*Rating*
Volume of Sales or Work Produced	3+
Quality of Work Produced	3+
Knowledge of Job	4
Cooperation and Dependability	3+
Attendance and Punctuality	3

APPRAISE THE FOLLOWING ONLY WHEN APPLICABLE TO PARTICULAR JOB

Ability to Perform Other Jobs	3
Judgment	3+
Personal Characteristics	3+
COMPOSITE (Over-All) RATING	3+

COMMENTS

Signed .....

APPRAISAL FACTOR DEFINITIONS

VOLUME OF SALES OR WORK PRODUCED—Consider the volume of work accomplished, initiative exercised, industry, and rate of work as compared with what is expected on the specific job, and with the accomplishments of others doing the same type of work.

Respondent's Exhibit No. 2.

Consult available factual information such as: personal production and commission records; carrier claim performance rating; monthly credit report and retail credit rating received from the General Credit Office; contest winners; servicemen's performance report.

QUALITY OF WORK PRODUCED—This appraisal is based on the department head's or store manager's factual knowledge of the quality of the employee's work in comparison with the accepted standard of accuracy for the job and the quality of the employee's work compared with that of other employees doing similar work.

KNOWLEDGE OF JOB—Consider knowledge of and ability to perform regularly assigned duties, opportunity provided to learn these duties, and ability to learn quickly and thoroughly.

CO-OPERATION AND DEPENDABILITY—Consider willingness to accept jobs other than those regularly assigned, teamwork, attitude in taking instructions, interest in achieving improved performance and departmental efficiency, and the amount of supervision required.

ATTENDANCE AND PUNCTUALITY—The appraisal on this factor is based on records of the employee's attendance and punctuality during the rating period. Consideration should be given to the reasons for the irregularities as well as the frequency of occurrence.

ABILITY TO PERFORM OTHER JOBS—Consider the employee's ability to perform a variety of duties when it is a desirable or necessary requirement.

JUDGMENT—The appraisal on this factor is based primarily on the knowledge the department head or store

manager has of the employee's ability to arrive at sound conclusions and decisions. This factor should be appraised only where there is a definite need for exercising judgment in order to perform the duties of the job properly.

PERSONAL CHARACTERISTICS—Consider carefully whether specific personal characteristics are required to perform the duties of the job properly. This factor applies chiefly on jobs requiring personal contact with customers or those rendering personal services, with emphasis on the reaction of other employees of the store and of customers to the employee.

COMPOSITE (OVER-ALL RATING)—The determination of composite or over-all ratings of employees must in the final analysis be determined by good judgment, The over-all rating is a composite, and not an average, of the ratings which have been given on the individual factors. The relative importance of each of the factors applying to a specific job must be weighed and the proper over-all rating determined.

APPRAISAL RATING DEFINITIONS

Each factor is to be rated on one of the five degrees defined.

GROUP 1 (Rate on all jobs)

Rating

VOLUME OF SALES OR WORK PRODUCED

5 Production always unusually high. Works very fast and steadily.

4 Production usually more than required. Considered noticeably satisfactory. Fast, steady worker.

DEPARTMENT HEAD & STORE MANAGER AND DIST
AT THE TIME OF EACH SIT TO STORE BY DISTRICT MAN

42	SHOUDY, B.	3/15/54	3/4/54	(1.0)	(7.8)	7.7	2			42	BEGEAL, H.	7/47	10/54	(9.4)	(18.5)	42.2	3		
60	FIRENZE, J.	1/15/54	5/1/53	1.9 (9.4)	(5.5) (9.0)	6.5	2+			60	SHOUDY, B.	6/10/54	4/11/54	11.8 (29.7)	7.5 (22.7)	14.3			
72-76	McGRAW, J.	5/7/50	10/3/49	(10.8) (26.8)	1.7 (14.2)	17.9	3			72-76	McGRAW J	5/7/53	10/7/54	(13.1) (39.8)	(31.2) (4.0)	7.9			
83-84	PRUTISTO, D.	10/51	9/3/48	(4.2) (13.2)	(.9) (12.3)	10.2	2+			83-84	PRUTISTO, D.	10/51	8/30/48	(5.4) (27.7)	(.9) (15.5)	9.4	3		
86	COFFEY, T.	6/33	6/33	(5.1)	(8.9)	14.1	3			86	COFFEY, T.	6/33	6/33	(26.0)	(16.9)	8.2			
87	FELKER, F.	5/44	5/44	(9.3)	(6.04)	16.7	2	REPLACE											
54-64	WHITE, C.	7/15/46	7/1/46	(1.2) (11.8)	(3.5) (2.5)	19.8	/	OUTSIDE SALESMAN REPLACED		54-64	SIEDLECKI, J.	4/47	2/25/54	(6.2) (21.0)	(20.2) (6.5)	5.8			
65-85	PAULIK, M.	3/30/49	7/11/46	(2.4) (24.9)	(1.8) (2.3)	27.1		OUTSIDE SALESMAN		65-85	DUFOUR, L.	3/15/54	2/20/54	(32.1) (24.9)	(21.8) (2.5)	11.9	2+		
66	SCHADEL, G.	7/11/54	9/40	(7.4)	(6.2)	6.1	2+			66	SCHADEL, G.	7/11/54	9/40	(7.4)	(6.2)	4.1	2+		
72-73	SUMMERS, E.	7/1/54	3/11/54	(18.9) (6.0)	(20.) (1.4)	23.2	NEW			72-12	SUMMERS, E	7/11/54	3/11/54	(5.4) (17.7)	(16.5) 20.6	6.4			
74-81	COOK, S.	9/1/53	9/1/53	(32.2) (32.2)	(28.2) (12.2)	44.9	2+			74-81	COOK, S.	6/1/53	6/1/53	(5.7) (16.9)	(13.4) (13.4)	43.6	1	REPLACE	
SEE-VICE	JAGGER, K.	1/44	8/39	(3.5)	3.9	—	3			SEE-VICE	JAGGER, K.	1/44	8/39	11.8	6.0	—	3		
DIS-PLAY	BISHOP, C.	9/15/53	9/15/53	—	—	—	2			DIS-PLAY	GRANSBURY, T.	9/11/53	7/1/54	—	—	—	3		
LIVE BAIT	GULINO, C.	9/15/54	9/3/54	—	—	—	2 NEW			LIVE BAIT	GULINO, C.	6/1/54	9/3/52	—	—	—	3		
CASH IER	RANDO, A.	1/15/54	11/15/54	—	—	—	2+			CASH IER	SMITH J	8/19/54	7/1/54	—	—	—	NEW		
U.S. CO.	BREWER, R.	11/15/53	5/13/43	—	—	—	2			U.S. CO.	BREWER, R.	11/0/53	5/13/43	—	—	—	3+		
REC.	ROMANO, D.	11/15/54	11/1/54	—	—	—	3			REC.	ROMANO, D.	11/00/54	11/1/54	—	—	—	2+		
CAT-ORY	JULIAN, M.	9/15/53	7/3/47	—	—	—	2	Resigned to Relieve		CAT-ORY	FOLEY, A.	9/20/54	11/20/54	—	—	—	1	REPLACE	
LIQUOR	SCOTT, P.	7/15/53	11/21/49	—	—	—	3	(K		LIQUOR	SCOTT, P.	9/0/50	11/21/49	—	—	—	3		

GUIDE FOR OVER ALL RATING - 5. EXTREMELY SATISFACTORY. 4. NOTICEABLY SATISFACTORY. 3. SATISFACTORY 2. NOTICEABLY UNSATISFACTOR

3-60

Reap's Exh # 81

42	BEGEAL, H.	7/47	10/54	(9.4)	(18.5)	42.2	3												
60	SHOUDY, B.	6/10/54	4/11/54	11.8 (29.7)	7.5 (22.7)	14.3													
72-76	McGRAW J	5/7/53	10/7/54	(13.1) (39.8)	(31.2) (4.0)	7.9													
83-84	PRUTISTO, D.	10/51	8/30/48	(5.4) (27.7)	(.9) (15.5)	9.4	3												
86	COFFEY, T.	6/33	6/33	(26.0)	(16.9)	8.2													
54-64	SIEDLECKI, J.	4/47	2/25/54	(6.2) (21.0)	(20.2) (6.5)	5.8													
65-85	DUFOUR, L.	3/15/54	2/20/54	(32.1) (24.9)	(21.8) (2.5)	11.9	2+												
66	SCHADEL, G.	7/11/54	9/40	(7.4)	(6.2)	4.1	2+												
72-12	SUMMERS, E.	7/11/54	3/11/54	(5.4) (17.7)	(16.5) 20.6	6.4													
74-81	COOK, S.	6/1/53	6/1/53	(5.7) (16.9)	(13.4) (13.4)	43.6	1	REPLACE											
SEE-VICE	JAGGER, K.	1/44	8/39	11.8	6.0	—	3												
DIS-PLAY	GRANSBURY, T.	9/11/53	7/1/54	—	—	—	3												
LIVE BAIT	GULINO, C.	6/1/54	9/3/52	—	—	—	3												
CASH IER	SMITH J	8/19/54	7/1/54	—	—	—	NEW												
U.S. CO.	BREWER, R.	11/0/53	5/13/43	—	—	—	3+												
REC.	ROMANO, D.	11/00/54	11/1/54	—	—	—	2+												
CAT-ORY	FOLEY, A.	9/20/54	11/20/54	—	—	—	1	REPLACE											
LIQUOR	SCOTT, P.	9/0/50	11/21/49	—	—	—	3												

TISFACTORY. 3. SATISFACTORY 2. NOTICEABLY UNSATISFACTORY 1. EXTREMELY UNSATISFACTORY - REMOVE IMMEDIATELY

Reap's Exh # 81

R-81 DUP.

25572

Ritter, I.

115

Rooms 9 & 6

71-Extra

OCT 7 1953

SEP 30	5	01				
SEP 30	12	20				
SEP 30	11	32	7			
SEP 6	3	54				
SEP 5	5	00				
SEP 5	1	13				
SEP 5	12	17	7			
SEP 5	9	00				
SEP 4	5	01				
SEP 4	1	00				
SEP 4	12	09	6			
SEP 4	10	01				

IN	OUT	IN	OUT	NOON IN	NOON OUT	EVENING IN	EVENING OUT	
								THURSDAY
								FRIDAY
								SATURDAY
								SUNDAY
								MONDAY
								TUESDAY
								WEDNESDAY

SEP 2	5	31				
SEP 2	1	13	1/4			
SEP 2	12	21				
SEP 2	9	14				
SEP 1	1	02	3			
SEP 1	9	27				
SEP 31	9	00				
SEP 31	5	50				
SEP 31	5	00	9 1/2			
SEP 31	12	50				
SEP 31	12	04				
SEP 31	9	15				

IN	OUT	IN	OUT	NOON IN	NOON OUT	EVENING IN	EVENING OUT	
								THURSDAY
								FRIDAY
								SATURDAY
								SUNDAY
								MONDAY
								TUESDAY
								WEDNESDAY

TOTAL

Days 6

Hours 46 1/2

Never allow anyone to alter your ... If you record is ... report any incorrect entry immediately to your ... Timekeeper. If absent please phone as promptly as possible.

MONTGOMERY WARD & CO.

RECEIVED PAYMENT FOR ALL SERVICES RENDERED TO DATE

TERMINATION Date Hours

Last Day Hours

(Employee Sign Here)

NAME [redacted], I.

CLERK NO. DEPT. [redacted]

WEEK ENDING OCT 21 1953

OCT 17	5	32									
OCT 17	12	5P	7 1/4								
OCT 17	12	08									
OCT 17	9	12									
			4								
OCT 16	1	17	08								
OCT 16	9	21									
OCT 15	9	01									
OCT 15	10	05									
OCT 15	3	03	9 1/2								
OCT 15	2	12									
OCT 15	11	12									
OCT 15	9	18									

IN | OUT | NOON | AM | THIRD DAY

Total Days 6

Register this card each day. Never allow another to register for you. If your record is incomplete or in error, report immediately to your department timekeeper. If absent please phone as promptly as possible.

MONTGOMERY WARD & CO.

RECEIVED PAYMENT FOR ALL HOURS ENTERED ON THIS CARD TO DATE

(Employee Sign here)

Reg's 4th #7

OCT 14	4	4P									
OCT 14	1	08									
OCT 14	12	02	6 1/2								
OCT 21	9	21									
OCT 20	3	01									
OCT 20	1	13	6 1/2								
OCT 20	12	27									
OCT 20	9	21									
OCT 19	5	02									
OCT 19	2	06	6 1/2								
OCT 19	1	18									
OCT 19	9	23									

IN | OUT | NOON | AM | IN | OUT | EVENING | PM | WEDNESDAY

IN | OUT | NOON | AM | IN | OUT | EVENING | PM | TUESDAY

IN | OUT | NOON | AM | IN | OUT | EVENING | PM | MONDAY

IN | OUT | NOON | AM | IN | OUT | EVENING | PM | SUNDAY

NAME [redacted], I. 100

CLERK NO. DEPT. 72-[redacted]

WEEK ENDING OCT 28 [redacted]

	IN	OUT	IN	OUT	
SATURDAY	AM	NOON	PM	EVENING	
OCT 24 &5 31					
OCT 24 &1 41					7
OCT 24 &12 41					
OCT 24 &9 25					
FRIDAY					
OCT 23 &5 01					
OCT 23 &1 16					6 1/2
OCT 23 &12 10					
OCT 23 &9 27					
THURSDAY					
OCT 22 &9 01					
OCT 22 &7 06					
OCT 22 &5 08					
OCT 22 &2 06					9 1/2
OCT 22 &1 03					
OCT 22 &9 25					

TOTAL

Days 5

Hours 36 1/2

Register your own time only. Never allow another to register for you. If your record is incomplete or in error, report immediately to your departmental timekeeper. If absent, please phone as promptly as possible.

MONTGOMERY WARD & CO.

RECEIVED PAYMENT FOR ALL SERVICES RENDERED TO DATE

TERMINATION: Date | Reason | Last Time Worked

(Employee Sign here)

Resp's Exh. #8

	IN	OUT	IN	OUT	
TUESDAY	AM	NOON	PM	EVENING	
OCT 21 &4 46					
OCT 21 &2 13					6 1/2
OCT 21 &1 11					
OCT 28 &9 16					
MONDAY					
OCT 26 &5 01					
OCT 26 &2 00					6 1/2
OCT 26 &1 07					
OCT 26 &9 29					
SUNDAY					
NE 10/27					
above					4

91

NAME Ritter, I

CLERK NO DEPT extra

WEEK ENDING JUL 14 1954

IN	OUT	IN	OUT	IN	OUT	TOTAL
JUL 10	3 32					7
JUL 10	8 L 3P					
JUL 10	3 3P					
JUL 10	8 3 1P					
JUL 9	8 L 0P					3½
JUL 9	8 9 2P					
JUL 8	8 9 0P					
JUL 8	8 5 1P					1
JUL 8	8 4 0P					4½
JUL 8	8 1 3P					
JUL 8	8 1 0P					
JUL 8	8 9 2P					

Register your own time only. Do not allow another to register for you. It is against the rules. If you make an error report immediately to your departmental timekeeper. Thank you please phone us to notify us promptly.

MONTGOMERY WARD & CO.

Days 6

Hours 39½

RECEIVED PAYMENT FOR ALL SERVICES RENDERED TO DATE

(Employee Sign here)

Date Hours Time Reason

195364

Recap's Eph. #9

IN	OUT	IN	OUT	IN	OUT	TOTAL
JUL 13	8 3 7					6½
JUL 12	8 3 1P					
JUL 12	8 3 1P					6½
JUL 12	8 3 1P					

IN	OUT	IN	OUT	IN	OUT
AM		NOON		PM	

SUNDAY MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY

Reg Ch. #10

		OUT			
		IN			
JUL 14	AM	OUT	2 PM EVENING	1	WEDNESDAY
JUL 14		IN			
JUL 14		OUT	NOON		
JUL 21		IN			
		OUT			
		IN			
JUL 20		OUT	2 PM EVENING	1	TUESDAY
JUL 20		IN			
JUL 20		OUT	NOON		
JUL 20		IN			
		OUT	PM		
		IN			
		OUT	EVENING		MONDAY
		IN			
		OUT	NOON		
		IN	AM		
		OUT	PM		
		IN			
		OUT	NOON		SUNDAY
		IN	AM		

81

NAME Witter, L.

CLERK NO DEPT Engrg

WEEK ENDING JUL 21 1954

		OUT			
		IN			
JUL 17		OUT	2 PM EVENING	7	SATURDAY
JUL 17		IN			
JUL 17		OUT	NOON		
JUL 17		IN			
		OUT			
		IN			
JUL		OUT	2 PM EVENING	7	FRIDAY
JUL 16		IN			
JUL 16		OUT	NOON		
JUL 16		IN		3 1/2	
JUL 15		OUT	AM		
JUL 15		IN			
JUL 15		OUT	PM EVENING		THURSDAY
JUL 15		IN		9 1/2	
JUL 15		OUT	NOON		
JUL 15		IN			
JUL 15		OUT	AM		
JUL 15		IN			

TOTAL

Register your own time only. Never allow another to register for you. If your record is incomplete or in error, report immediately to your departmental timekeeper. If absent, please phone as promptly as possible.

MONTGOMERY WARD & CO.

Days 6

Hours 33

RECEIVED PAYMENT FOR ALL SERVICES RENDERED TO DATE	TERMINATION Date	Reason	Last Time Reason

(Employee Sign here)

2-10

Rep's Exh #11

[redacted]

NAME Bayton, I.

CLERK NO. DEPT. [redacted]

WEEK ENDING AUG 4 1954

JUL 28											
JUL 28											
JUL 28											
JUL 4											
WEDNESDAY	6½	IN	OUT	IN	OUT	AM	NOON	PM	EVENING		
JUL 3											
JUL 3											
JUL 3											
JUL 3											
TUESDAY	6½	IN	OUT	IN	OUT	AM	NOON	PM	EVENING		
JUL 2											
JUL 2											
JUL 2											
JUL 2											
MONDAY	6½	IN	OUT	IN	OUT	AM	NOON	PM	EVENING		

Worthless Lock											
JUL 31											
JUL 31											
JUL 31											
JUL 30											
JUL 30	9½	IN	OUT	IN	OUT	AM	NOON	PM	EVENING		
JUL 29											
JUL 29											
JUL 29											
JUL 29											
JUL 29											
JUL 29	9½	IN	OUT	IN	OUT	AM	NOON	PM	EVENING		

AUG 1 1951

Name Witter, I.

Dept. Extra

Rep's Exh H/2

JUL 4																							
JUL 4																							
JUL 4																							
JUL 11																							
JUL 10																							
JUL 10																							
JUL 10																							
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JUL 9																							
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JUL 5																							
JUL 5																							

Reap's - Exh # 13

NAME Wilson, I.

CLERK NO. DEPT Extra

WEEK ENDING AUG 18 1954

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
IN AM							
OUT NOON							
IN PM							
OUT EVENING							
IN AM							
OUT NOON							
IN PM							
OUT EVENING							
HOURS		8 1/2	8 1/2	6 1/2	9 1/2	7	

Register your own time only. Never allow another to register for you. If your record is incomplete or in error, report immediately to your departmental timekeeper. If absent, please phone as promptly as possible.

MORTGOMERY WARD & CO.

TOTAL Days 6 Hours 40 1/4 Lost Time Reason

RECEIVED PAYMENT FOR ALL SERVICES RENDERED TO DATE

TERMINATION Date Reason

(Employee Sign here)

19834-4

Rimp's Exh. #16

WEEKLY PAYROLL REPORT

1·2·173 BINGHAMTON, N.Y.

To TYC

WEEK ENDED 6/2 19 54

6263 SELLING DEPARTMENTS

6660 54 COMMISSION DEPARTMENTS

	DEPT. 85	DEPT. 6160	DEPT. 81 [illegible]	DEPT.	DEPT. 66	DEPT. 71-73	TOTAL (NON-FOOD) (LOW)	GRAND TOTAL (FASHION)
PLAN	925	6	1	PLAN	5	5		
	A				H	L	M	N	C
					15077	1353	533	1567	69	636	775	22662
					11165	400	200	—	300	200	425	12690
					3952	(1)	533	1	(66)	(60)	196	4848
.54	252	96	17	80	302		1157	100	120	125	115	60	550	2755
#10														
3/15	252	36	17	10		908	1214	100	[illegible]	[illegible]	23	60	618	2740
	—	1	—	7			(5)	—	60	—	(8)	—	(68)	
	—	12	—	7	13	#85 55	256 77							
							29						—	29
							—	20	22	15	17	6	122	122
		17	27						52		13	—	672	2906
	76													
TOTAL SALES (000)						1478								
% TO ALL						7.6	7.9	11.2	6.0	10.5	7.8	10.4	8.6	12.7

		LAST YEAR	THIS YEAR
SELLING	4 3/4	35	36	635	593
NON-SELLING	2 3/4	17	19 3/4		
ALL OTHER (INCL. OFFICE, MDSE. PROD., SUPPL., TOTAL CAT. MAINT., CONCESS.)	9 1/4	—	14 3/4		
TOTAL		1 6	70		

19.	ESTIMATED ADDED COMPENSATION (CURRENT PERSONAL PRODUCTION PLAN 1.75 WEEK ONLY)	264
20.	(1ST STORES ONLY — NON-SELLING PAYROLL CREDIT FOR PREPARATION OF DIVISIONAL STATISTICS REPORTS)	
21.	PAYROLL (LINE 1, COL. "O" & LINE 19 – LINE 20)	$ 3170
22.	% TO SALES (21 ÷ LINE 1, COL. "C")	12.9 %
23.	% TO SALES - LAST YEAR	13.8 %
24.	MONTHLY BUDGET	12.0 %

PAYROLL CLERK [illegible] in quadruplicate and mail each Friday. Prepare report in pencil, do NOT use typewriter. Show sales and payroll to even dollars.

+ Emergency asst cashier + asst rec. part training

(PAYROLL CLERK)

(STORE MANAGER)

R-16 Dept

RUPERT #26

WEEKLY PAYROLL REPOR

•2• '3 BINGHAMTON, N.Y.

| | | |

3 Production normally meets standard requirements. Average worker. Performance satisfactory.
2 Production usually below standard requirements. Slow worker. Performance unsati-factory.
1 Production very unsatisfactory. Seldom meets standards. Loafs, wastes time.

QUALITY OF WORK PRODUCED

5 Always does a very thorough, accurate job. Rarely makes errors.
4 Usually does a complete, accurate job. Occasionally makes errors.
3 Work usually meets quality requirements. Has average amount of errors.
2 Work is frequently inaccurate. Seldom meets quality standards. Has many errors
1 Work is very careless. Causes waste. Very unsatisfactory performance.

KNOWLEDGE OF JOB

5 Outstanding knowledge of present job and necessary related work. Considered as possessing highest skill and experience at regular assignment.
4 Good knowledge of present job and necessary related work. Considered thoroughly capable at regular assignments.
3 Fair knowledge of present job and necessary related work. Considered as possessing only average skill and capabilities.
2 Possesses no skill beyond routine performance on present job. Work is generally unsatisfactory requiring

close supervision and considerable instruction beyond average requirements.

1 Inadequate and definitely unsatisfactory knowledge of present job. No knowledge of related work. Unable to absorb or retain instruction.

CO-OPERATION AND DEPENDABILITY

5 Always reliable. Excellent teamworker. Accepts and handles assignment unusually well. Requires very little supervision.

4 Usually reliable. Good teamworker. Handles assignments very well. Requires little supervision.

3 Co-operates, but sometimes only to degree he deems necessary. Average dependability. Requires average supervision.

2 Unco-operative attitude and usually undependable. Requires close supervision.

1 Very unco-operative and very poor teamworker. Very unsatisfactory and unreliable. Requires excessive supervision.

ATTENDANCE AND PUNCTUALITY

5 Very punctual. Rarely absent or late without good cause.

4 Very punctual. Seldom absent or late without good cause.

3 Generally punctual. Occasionally absent or late without good cause.

2 Frequently absent or late without good cause.

1 Habitually absent or late without good cause.

Respondent's Exhibit #2.

GROUP 2 (Rate on jobs where applicable in addition to Group 1 factors)

Rating

ABILITY TO PERFORM OTHER JOBS

5 Outstanding all-round employee. Performs all jobs expected of him exceptionally well and learns new jobs very fast. Considered as possessing highest skill and wide experience on generally related work.

4 Performs most jobs expected of him well and learns new jobs fairly fast. Good all-round employee. Considered thoroughly capable and experienced on generally related work.

3 Performs a few different jobs well but has difficulty in learning some new jobs. Requires at least average amount of time in becoming proficient at any new type of work. Considered only moderately versatile.

2 Slow in learning most new jobs although may perform some routine tasks in satisfactory manner. Very limited ability and normally considered only capable of performing simple tasks.

1 Exceedingly slow in learning new work of any type and generally incapable of performing even routine tasks in a satisfactory manner. Unable to follow or remember instructions except those involving very simplest of routine.

JUDGMENT

5 Has unusual ability to analyze, to evaluate, and to make prompt decisions which promote customer good will. Conclusions very sensible, intelligent, and reliable.

4 Capable of some analysis and of making most decision relating to job. Conclusions usually sensible and reliable.

3 Judgment usually dependable on semi-routine matters. Has average ability to analyze and evaluate facts. Conclusions usually reliable although considerable time required to make decisions.

2 Judgment erratic and not very reliable. Seldom analyzes facts and conditions. Requires close supervision and guidance.

1 Has very poor ability to analyze facts and exercise independent judgment. Decisions seldom practical or sound or acceptable to customers. Requires excessive supervision and guidance.

PERSONAL CHARACTERISTICS

5 Excellent, well-balanced personality. Even temperament. Very neat and presents very good appearance. Impresses customers and employees favorably.

4 Very good, friendly personality. Generally neat and presents good appearance.

3 Has average personality. Usually neat and presents a satisfactory appearance.

2 Frequently inclined to be sullen or moody. Careless about appearance.

1 Ill-natured or unpleasant personality. Slovenly in appearance.

Respondent's Exhibit 83.

RETAIL STORE EMPLOYEE APPRAISAL

PLACE IN EMPLOYEE'S PERSONNEL ENVELOPE

Name of Employee McGraw, J. M. STORE STAMP
Position D. H., Div. 75-76

12/28/53
(Date of Appraisal)
11-7-49
(Date Employed by Wards)
8-7-50
(Date Employed in Present Job)

APPRAISAL FACTORS FOR ALL JOBS

Factor	*Rating*
Volume of Sales or Work Produced	4
Quality of Work Produced	5
Knowledge of Job	5
Cooperation and Dependability	5
Attendance and Punctuality	5

APPRAISE THE FOLLOWING ONLY WHEN APPLICABLE TO PARTICULAR JOB

Ability to Perform Other Jobs	4
Judgment	4
Personal Characteristics	4
COMPOSITE (Over-All) RATING	4+

COMMENTS

Signed C. A. RUMBLE

APPRAISAL FACTOR DEFINITIONS

VOLUME OF SALES OR WORK PRODUCED—Consider the volume of work accomplished, initiative exercised, industry, and rate of work as compared with what is expected on the specific job, and with the accomplishments of others doing the same type of work.

Consult available factual information such as: personal production and commission records; carrier claim performance rating; monthly credit report and retail credit rating received from the General Credit Office, contest winners; servicemen's performance report.

QUALITY OF WORK PRODUCED—This appraisal is based on the department head's or store manager's factual knowledge of the quality of the employee's work in comparison with the accepted standard of accuracy for the job and the quality of the employee's work compared with that of other employees doing similar work.

KNOWLEDGE OF JOB—Consider knowledge of and ability to perform regularly assigned duties, opportunity provided to learn these duties, and ability to learn quickly and thoroughly.

CO-OPERATION AND DEPENDABILITY—Consider willingness to accept jobs other than those regularly assigned, teamwork, attitude in taking instructions, interest in achieving improved performance and departmental efficiency, and the amount of supervision required.

ATTENDANCE AND PUNCTUALITY—The appraisal on this factor is based on records of the employee's attendance and punctuality during the rating period. Consideration should be given to the reasons for the irregularities as well as the frequency of occurrence.

ABILITY TO PERFORM OTHER JOBS—Consider the employee's ability to perform a variety of duties when it is a desirable or necessary requirement.

JUDGMENT—The appraisal on this factor is based primarily on the knowledge the department head or store

manager has of the employee's ability to arrive at some conclusions and decisions. This factor should be appraised only where there is definite need for exercising judgment in order to perform the duties of the job properly.

PERSONAL CHARACTERISTICS—Consider carefully whether specific personal characteristics are required to perform the duties of the job properly. This factor applies chiefly on jobs requiring personal contact with customers or those rendering personal services, with emphasis on the reaction of other employees of the store and of customers to the employee.

COMPOSITE (OVER-ALL RATING)—The determination of composite or over-all ratings of employees must in the final analysis be determined by good judgment. The over-all rating is a composite, and not an average, of the ratings which have been given on the individual factors. The relative importance of each of the factors applying to a specific job must be weighed and the proper over-all rating determined.

APPRAISAL RATING DEFINITIONS

Each factor is to be rated on one of the five degrees defined.

GROUP 1 (Rate on all jobs)

Rating

VOLUME OF SALES OR WORK PRODUCED

5 Production always unusually high. Works very fast and steadily.

4 Production usually more than required. Considered noticeably satisfactory. Fast, steady worker.

3 Production normally meets standard requirements. Average worker. Performance satisfactory.

2 Production usually below standard requirements. Slow worker. Performance unsatisfactory.

1 Production very unsatisfactory. Seldom meets standards. Loafs, wastes time.

QUALITY OF WORK PRODUCED

5 Always does a very thorough, accurate job. Rarely makes errors.

4 Usually does a complete, accurate job. Occasionally makes errors.

3 Work usually meets quality requirements. Has average amount of errors.

2 Work is frequently inaccurate. Seldom meets quality standards. Has many errors.

1 Work is very careless. Causes waste. Very unsatisfactory performance.

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quiring close supervision and considerable instruction beyond average requirements.

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1 Habitually absent or late without good cause.

Respondent's Exhibit 83.

GROUP 2 (Rate on jobs where applicable in addition to Group 1 factors)

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2 Slow in learning most new jobs although may perform some routine tasks in satisfactory manner. Very limited ability and normally considered only capable of performing simple tasks.

1 Exceedingly slow in learning new work of any type and generally incapable of performing even routine tasks in a satisfactory manner. Unable to follow or remember instructions except those involving very simplest of routine.

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3 Has average personality. Usually neat and presents a satisfactory appearance.

2 Frequently inclined to be sullen or moody. Careless about appearance.

1 Ill-natured or unpleasant personality. Slovenly in appearance.

Respondent's Exhibit 84.

CC: Messrs. T. J. Johnston
CC: Messrs. W. G. Young
G. D. Maxon
R. M. Williott

Regional Merchandisers:
District Managers:

New York Office
May 6, 1954

ALL STORE MANAGERS
REGION ONE

Re: LABOR POLICY

Attached find a current letter from our Vice-President, Mr. J. A. Barr, outlining the labor policy to be pursued by our Store Managers.

You are to read this letter very carefully and cover its contents completely with your Assistant Manager or Assistant Managers. After you have assured yourself that you are completely familiar with its provisions, please sign the return sheet and forward to my office. Any questions that should arise in your review of this letter should be listed on the return sheet, and will be answered shortly.

You should keep this letter in your Personal and Confidential File so that it will be readily available for reference an any labor subject that might conceivably arise.

R. H. FIELD

ew
Att:

Respondent's Exhibit 84.

MONTGOMERY WARD
CHICAGO 7

March 15, 1954

STORE MANAGERS

LABOR POLICY

The relations between Wards and labor unions are subject to the provisions of various state and federal laws. Following is an outline of the main requirements. Acquaint yourself with this outline. Any act not in accord with it is contrary to the law, contrary to company policy, and cannot be tolerated.

1. EMPLOYEES HAVE THE RIGHT EITHER TO JOIN OR NOT TO JOIN A LABOR UNION, AS THEY WISH. You must not interfere with, coerce or restrain the employees in the exercise of this right.
   a. You must not spy upon, or have others spy upon, union activities of employees.
   b. You must not directly or indirectly threaten to discharge or demote, or to penalize an employee in any way in an attempt to influence him either to join or not to join a labor union.
   c. You must not directly or indirectly promise to promote or reward an employee in any way in an attempt to influence him.
   d. You may express any view, argument or opinion you wish so long as your expression doesn't contain a threat of reprisal (paragraph b. above) nor a promise of benefit (paragraph c. above).

2. You must not contribute support to any labor organization.
   a. The employees of any store, house, or warehouse are privileged to form a union of their own, not

affiliated with one of the national labor organizations, if they so desire.

b. You must not support such an organization in any way.

3. You must not encourage or discourage union membership by discrimination between union members and non-members.

a. The fact that an employee is known to be a union member, or is known not to be a union member, must be completely disregarded in determining whether the employee should be laid off, discharged, promoted, demoted, or transferred.

b. Make all decisions respecting lay-offs, promotions, transfers, etc. on a basis of merit—performance, experience, ability, and character. When these factors are substantially equal, length of service should govern.

c. Be absolutely impartial—treat union members and non-members alike.

4. Labor union, as well as employers, are prohibited from coercing or restraining employees if the exercise of their right to join or not to join a union. Therefore, if a union representative

a. injures or threatens to injure an employee or members of his family,

b. damages or threatens to damage the property of an employee or of his family,

c. pickets an employee's home,

d. threatens to secure the discharge of an employee,

e. threatens to increase the union's dues or initiation fees for any employee who fails to join immediately, or

f. threatens to sabotage the work record of an employee,

report the facts immediately to the company's Manager of Labor Relations at Chicago.

5. Labor unions are prohibited from engaging in secondary boycotts against the company or its merchandise. Therefore, if any union

a. places Wards on an "unfair list",

b. causes contractors or tradesmen, such as carpenters, plumbers and electricians, to refuse to deal with Wards, or to refuse to handle or work on Ward merchandise.

c. causes truckers, expressmen or railroads to refuse to handle Ward merchandise, or

d. causes the employees of any other employer to refuse to work on or with Ward merchandise, or to refuse to perform any services for Wards,

report the facts immediately to the Manager of Labor Relations at Chicago.

6. Distribution of union literature and solicitation of union membership is permissible on company property under the following conditions only:

a. Only employees of Wards shall be permitted on any part of the company's property not open to the general public. While in departments open to the public, non-employee union representatives must not disturb the operation of the business. They must conduct themselves in an orderly manner; they may not interfere with the work of any employee; they may not distribute literature; they may not make speeches or hold meetings.

b. No employee shall distribute union literature or solicit union memberships on company time, or while the employees to whom the literature is being distributed or whose membership is being solicited are on company time.

c. Employees may solicit union memberships (including distribution of union literature) on company property so long as: (a) the employees, both those soliciting and those being solicited, are on their own time; and (b) the solicitation is conducted in a quiet and orderly manner and does not interfere with the operation of the company's business. Meetings or speeches are not to be permitted; and solicitation is forbidden which results in disturbing or interfering with the work or function of any employee or department, or which is detrimental to maintaining the premises in a clean and attractive condition.

7. The company will bargain collectively with any qualified labor organization which represents a majority of the employees in a proper bargaining unit. Centralized control of all bargaining is necessary to assure observance of the law and uniform handling. Therefore:

a. No manager is authorized to bargain or otherwise deal with a union without first having received explicit instruction from the Manager of Labor Relations at Chicago, and

b. No manager is authorized to enter into any agreement with a union, either written or oral, without having previously received express and direct authority to make such agreement from the Manager of Labor Relations at Chicago. This applies also

to agreements negotiated by Merchants Associations, Chambers of Commerce, etc.

Whenever anyone asks to bargain on behalf of the employees, you should tell him that you will convey his request to the home office. Then inform the Manager of Labor Relations at Chicago (with a copy to your Regional Manager) of the request, and follow his instructions in all future dealings with the union.

Promptly refer all communications from any union, National Labor Relations Board, Wage and Hour Division of U. S. Department of Labor, State Labor Department offices, etc., to the Manager of Labor Relations at Chicago.

This policy must be fully understood and observed by every Ward person in a supervisory capacity. Be sure that all such people in your organization are acquainted with it.

If you have any questions regarding this outline or its application to any particular situation, refer them to the Manager of Labor Relations at Chicago.

J. A. BARR
Manager of Labor Relations

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Stenographic Transcript of Testimony at Hearing of January 11, 1955.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
THIRD REGION

—o—

In the Matter
of
MONTGOMERY WARD & CO., INCORPORATED,
Respondent,
and
RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 1687, AFL,
Charging Party.

Case No. 3-CA-825.

—o—

Court Room,
Federal Building,
Binghamton, New York,
Tuesday, January 11, 1955.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a. m.

Before: Arthur E. Reyman, Esq.,
Trial Examiner.

Appearances:

William J. Cavers, Esq., Room 112, U. S. Court House, 68 Court Street, Buffalo, New York, appearing on behalf

of the General Counsel of the National Labor Relations Board.

David L. Dickson, Esq., J. Vernon Lloyd, Esq., Richard C. Scheidt, Esq., 619 W. Chicago Avenue, Chicago 7, Illinois, appearing on behalf of Montgomery Ward & Co., Incorporated, the Respondent.

Albert K. Plone, Esq., 511 Market Street, Camden, New

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Jersey, appearing on behalf of Retail Clerks International Association, Local 1687, AFL, the Charging Party.

Mr. Fred Blair, 315 Miners Bank Building, Wilkes Barre, Pennsylvania, appearing on behalf of Retail Clerks International Association, Local 1687, AFL, the Charging Party.

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PROCEEDINGS.

* * *

6

Mr. Dickson: If the Examiner please, the Respondent, Montgomery Ward & Company, Incorporated, at this time would like to object to this hearing proceeding and move for a stay of proceeding on the ground that in the absence of a General Counsel of the Board there is no authority to proceed inasmuch as under Section 3 (d) of the National Labor Relations Act final discretion and authority as to the investigation of charges, issuance of Complaints and prosecution of Complaints is vested in the General Counsel, and that office is now vacant.

Trial Examiner: Mr. Cavers, do you have any comment?

Mr. Cavers: Yes, I should like to be heard. I would like to say at the outset, although the Complaint as of this

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time has not been received in evidence, that the Complaint in this matter was issued as well as the Notice of Hearing, on November the 26th, 1954, when Gearge Batt was the General Counsel. I should also like to cite to you a case, H. N. Thayer Company, *et al*, in 99 NLRB at page 1122.

Trial Examiner: What is the date of 99? Was there a vacancy in the office of the General Counsel?

Mr. Cavers: Well, if you will let me continue, I think maybe it will explain itself. In that case, the Board—

Trial Examiner: Let me have the citation again.

Mr. Cavers: H. N. Thayer, T-h-a-y-e-r, Company, *et al*, 99 NLRB, 1122. In that case, the Board upheld the Trial Examiner's denying without comment—in other words, the Trial Examiner denied without comment the Respondent's motion to dismiss the allegations of the Complaint against Respondent's companies and to declare a mistrial because during the pendency of the hearing the then General Counsel resigned, and for a brief period and until his successor was appointed, the representative of the General Counsel allegedly had no authority to proceed with the trial.

The motion, in other words, in that case was similar to the motion that has been made here today and in that case the Trial Examiner denied the motion without comment, and his ruling was affirmed by the Board. Subsequently, the Board's decision was affirmed by the Court of Appeals

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for the First Circuit on June the 3rd, 1954, and that case is reported in 34 LRRM, at page 2250.

The Respondent then filed a petition for certiorari with the United States Supreme Court, and the United States Supreme Court denied the Respondent's Petition on behalf—on November 11, 1954.

At this time, I don't have the United States Supreme Court's citation on that case, but I will try to provide you with it before the close of the hearing.

Mr. Dickson: May I make this observation, Mr. Examiner, that the motion that I have presented is a motion for a stay, not a motion to dismiss.

Trial Examiner: Yes, I understand that.

Mr. Dickson: I wanted to call your attention to that distinction.

Trial Examiner: Of course, I can say that I am not taken completely by surprise, and I had given a little thought to the matter after my designation in this case, and had come to the conclusion that if the investigation—preliminary investigation on the Charge and the issuance of the Complaint had occurred within the tenure of our recent General Counsel of the Board that I believe the Board has jurisdiction. Therefore, Mr. Dickson, I will deny your motion and, of course, you are protected on the record.

* * *

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Mr. Dickson: * * *

May it be stipulated that General Counsel's Exhibit 4 is a list of the eligible voters for the election held August 17, 1954 within the bargaining unit described as all the employees of the Montgomery Ward, Binghamton, New York, retail store,

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excluding the manager, assistant manager, guards, pro-

fessional employees and supervisors as defined in the National Labor Relations Act, which list was agreed upon by the union and the employer and used by the Board as the eligibility list for said election.

Mr. Cavers: The said election was conducted at the company's Binghamton, New York, store on August the 17th, 1954.

Mr. Dickson: That is right. May it be so stipulated?

Mr. Cavers: Yes, it is agreeable with the General Counsel.

Mr. Dickson: Mr. Plone?

Mr. Plone: So stipulated.

* * *

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Mr. Dickson: Mr. Examiner, the Respondent, Montgomery Ward & Company, would like to ask leave to amend its Answer by adding three additional paragraphs, Paragraph IX to read as follows: "The Respondent Union by its Petition for election and by its stipulation as to the composition of the bargaining unit has consented to department heads or managers being included among the employees to be represented by the union for collective bargaining purposes under the National Labor Relations Act, and has represented such department heads or managers since its certification, and the union is, therefore, now estop to charge that Leonard DuFour or any other department head is a supervisor under the National Labor Relations Act." Further, to add Paragraph numbered X as follows: "The National Labor Relations Board through the Regional Director having certified a bargaining unit including Leonard DuFour and other department heads or managers as eligible for the

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representation election held on August the 17th, 195- their status as employees under the National Labor Relations Act has been adjudicated and is binding on the parties here."

* * * *

Mr. Dickson: Further to add to the Answer Paragraph XI as follows: "Respondent, Montgomery Ward & Company, Incorporated, relied on the certification of the bargaining unit aforesaid as including Leonard DuFour and other department heads or managers, and at least until the filing of the present Complaint showing a different intention with reference thereto on the part of the National Labor Relations Board Respondent was entitled to continue to rely on the status of Leonard DuFour and other department heads and managers as employees within the meaning of the National Labor Relations Act, and was compelled to refrain from interfering with the right of said DuFour or the right of any other such employee to the exercise of free speech in regard to union matters or any matters pertaining to collective bargaining so as to avoid unfair labor practices."

The Respondent asks leave to amend its Answer by adding the said paragraphs IX, X and XI as read.

* * * *

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Trial Examiner: Yes, that is understood. The Answer then may be amended by adding Paragraphs IX, X and XI as dictated into the record by Mr. Dickson, of Counsel for the Respondent Company.

Mr. Dickson: May it be stipulated that the Answer as thus amended may stand as answer to the Complaint as previously amended at this hearing.

Mr. Cavers: It may. It is agreeable with the General Counsel.

Mr. Plone: So stipulate.

Trial Examiner: Very well.

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C. A. RUMBLE was called as a witness by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address,

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please? A. C. A. Rumble, 137 Rosedale Drive, Sunrise Terrace, Binghamton, New York.

Q. Are you here today, Mr. Rumble, pursuant to a subpoena which was served on you by the General Counsel of the National Labor Relations Board? A. Yes, sir.

Q. And you are employed at the present time? A. Yes, sir.

Q. By whom? A. By Montgomery Ward.

Q. Now, how long have you worked for Montgomery Ward & Company? A. 21 years.

Q. Your present job is manager, is it not, of the Binghamton, New York, store? A. Yes.

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Q. How long have you been manager of the Binghamton store?

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A. March 15, 1953.

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Q. (By Mr. Cavers) Who is your assistant manager? A. Carl Brancato.

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Q. Now, do you have an employee in your store by the name of Polly Scott?

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A. Yes.

Q. What is her position in the store? A. She is credit department head.

Q. What are her duties, just generally? A. She is the manager of the credit department.

Q. And how many other employees are there in the credit department? A. Five, or it varies, six—it varies.

Q. Does Mrs. Scott as credit manager have the authority to hire? A. No.

Q. To fire? A. No.

Q. Does she have the authority to direct the employees in the credit department? A. Yes.

Q. Is she responsible for their direction? A. Yes.

Q. Now, do you have an employee in your store by the name of Stella Pandak, I guess you would pronounce it? A. Yes.

Q. Does she—what is her job or position with the company? A. She is fashion department head.

Q. And how many employees are there in the fashion department?

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A. Three. It varies.

Q. What in general are Mrs. Pandak's duties? A. She is responsible for all fashion operations.

Q. She is responsible for all fashion operations, by that do you mean that she is responsible for the operations of the fashion department? A. Yes.

Q. And what do you mean by "fashions"? A. Dresses and coats and suits, sportswear.

Q. Ladies' dresses and so forth? A. That is right.

Q. Now, does Mrs. Pandak have authority to hire? A. No.

Q. Does she have authority to fire? A. No.

Q. Is she responsible for the direction of the employees in the fashion department? A. Yes.

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Q. Do you know—do you have an employee by the name of Leonard DuFour? A. Yes.

Q. What is Mr. DuFour's position with the company? A. Department head of appliances.

Q. And does a department consist—some of your departments consist of more than one of what you call divisions? A. Yes.

Q. And will you tell the Examiner the difference between a department and a division? A. Well, in a department—a department head might head up three or four different divisions like appliances, 62 is radio, 63 is television, 68 is stoves, 69 is refrigerators, 85 is washing machines—that is all under one department head.

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Q. (By Mr. Cavers) Now, who had the responsibility for the direction of the employees in the appliance department consisting of Divisions 62, 63, 68, 69 and 85 in 1954? A. The appliance department head.

Q. He, in other words,—did he have the authority or the responsibility to direct these employees in their work? A. Yes.

Q. Now, in 1954, did Mr. DuFour have the authority to recommend hiring? A. Yes.

Q. And any recommendation that he would make would be given great weight, so to speak, by the company, is that right? A. I would say yes.

Q. Do you know whether or not during 1954 the company hired any employees that were recommended by Mr. DuFour? A. Why, I can't think of any particular names, no, but he interviewed some men. Of course, they had to be all checked through the office as to their references, police check, before they could be hired, a decision could be made on them.

Q. Well, let's put it this way then: Without asking you to recall any specific name of any employees, do you know of your own knowledge that some employees were hired for the appliance division upon the recommendation of Mr. DuFour in 1954?

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A. Well, I can't recall any names where he highly recommended anybody.

Q. Well, I'm not asking you now to recall a specific name, but can you recall without recalling the name that there were some employees that were hired upon the recommendation of Mr. DuFour in 1954? A. I would say yes.

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Q. (By Mr. Cavers) Now, do you know Frank Felker, Mr. Rumble? A. Yes.

Q. Do you recall when he came to work for the company? A. No.

Q. Well, do you recall when he left the employ of the company? A. Yes.

Q. And when was that, about the 23rd of August, 1954, about that time? A. 8-23-53.

Q. '54, isn't it? A. '54.

Q. And what was Mr. Felker's job with the company? A. Mr. Felker was department head of Division 87, farm supplies.

Q. Now, do you recall that he was the department head or are you reading now from your notes? A. No, I recall that he was a department head.

Q. Now, what happened to Mr. Felker on August 23rd? A. The basic organization was reduced and we had to cut our basic according to instructions of the New York office, and we had to decide on whether—who to cut from the basic and

we decided due to Mr. Felker's performance that he was the man to go.

Q. You say that "we had to decide" then who do you mean by "we"? A. Mr. Brancato and myself.

Q. Then it was you and Mr. Brancato that made the decision to let Mr. Felker go? A. No, Mr. Felker's job was eliminated on the basic organization.

Q. Well, I thought that your testimony was in answer to my previous question that you said that we had to decide to let Mr. Felker go? A. Well, they combined the divisions, 75, which is paint, and 87, which is farm supplies.

Q. Well, who was it that made the decision that Mr. Felker must go? A. Well, New York cutting from the basic.

Q. That is not the question I am asking you. Who was it that selected—if you want to put it that way—or made the decision to let Mr. Felker go? A. I don't think there

was any decision to be made. Mr. Felker was cut from the basic and we had to cut the basics that was it.

Q. Well, he was in your employ? A. Yes.

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Q. And then on August 23rd he is no longer in your employ, there must have been a decision, must there not, Mr. Rumble, that he was to leave the employ of the company? A. Yes, I was instructed to put the basic into effect.

Q. Well, whom then made the specific decision that Mr. Felker was to be released? A. I had.

Q. So you made the decision to release Mr. Felker and to— A. Yes, I'd say yes.

Q. All right. Now, he had been, had he not, the department head in Division 87, which was farm equipment? A. Yes.

Q. He had been that up until the summer of 1954 and at that time wasn't he given another department which was toys, I believe, 48—department 48? A. I don't recall.

Q. Do you ever recall calling Mr. Felker into your office and telling him along about the first of July in 1954 and telling him, well, you are going to—you are going to have to take over the toy department from now on? A. Yes, I do recall that.

Q. Do you recall that that occurred around or about the first of July of '54? A. I don't have any idea as to when it occurred, but I remember a meeting.

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Q. Now, why did you decide to let Mr. Felker go? A. Because I had no basic payroll to support him.

Q. Well, was there a choice between Mr. Felker and anyone else? A. Yes.

Q. Why did you choose Mr. Felker? A. I had to choose between Mr. McGraw and Mr. Felker.

Q. Why then did you decide to let Mr. Felker go? A. Because I felt that Mr. McGraw was the more capable department head.

Q. Who had been in your employ the longer?

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A. Mr. McGraw.

Q. He had been in your employ longer than Mr. Felker? A. Yes, sir.

Q. Well, when you made the decision to—when you were confronted with the decision whether to let Mr. Felker or Mr. McGraw go, did you look at your records to see which had been in your employ the longer? A. Yes, sir.

Q. And you found that Mr. McGraw had? A. Yes.

Q. Now, was your decision based solely upon your judgment that Mr. McGraw was the better of the two men? A. I would say yes.

Q. Well— A. With the exception on this basic position had been eliminated, and I had to reduce my basic, that was it.

Q. I understand that. Then, after you are confronted with reducing your basic, you had a further decision to make as to which particular employee to reduce, didn't you? A. Yes, but the way the basic came through from the New York office, Mr. McGraw was listed, 75 and 87, and then there was consideration if we had felt that Mr. Felker had been a better department head than Mr. McGraw we probably would retain him.

Q. Now, do you know what kind of a record, a sales record Mr. Felker had?

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A. Yes, sir.

Q. What kind of a record did he have? A. I would say good, a good sales record.

Q. Well, do you have any other—when you were confronted with the decision to let Mr. Felker go, was there anything else that entered into the decision other than you thought Mr. McGraw was better? A. Yes.

Q. What were those other factors? A. Well, Mr. Felker was a good salesman but other than that I would saty he was not so good, his maintenance was poor, his merchandising was not good, he would not run a clean, neat orderly department.

Trial Examiner: What does the term "merchandising" mean?

The Witness: Checking, ordering merchandise as needed as so.

Q. (By Mr. Cavers) Were there any other factors or were those the three factors? A. Mr. Felker had a riding pool, he couldn't work any overtime, any emergency come up he could never work, that was his excuse.

Q. Anything else? A. That is all I can recall at this moment.

Q. Now, what do you mean when you say that his maintenance

was poor? A. His counters was dirty, lacked filling up.

Q. What do you mean they lacked filling up? A. Keep the counter tops filled with merchandise, merchandise down from the stockroom or the warehouse.

Q. Did he have merchandise at that time to fill the counters with? A. I would say yes.

Q. Do you know? A. Yes,

Q. Now, did you observe these things yourself? A. Yes, sir.

Q. Did you ever criticize Mr. Felker for the maintenance in his department? A. Yes.

Q. When? A. I can't recall any dates.

Q. How many times? A. Several times. I have even helped him fill the counters myself and clean the counters and re-lay the department.

Q. How long had this been going on, this poor maintenance? A. Quite some time.

Q. Well, would you say two or three years? A. I know nothing of what happened before I got there.

Q. Had it been going on all during the time that you were

the manager of the store? A. Yes.

Q. Now, what do you mean when you say that his merchandising was not good? A. Well, he was—I'd say that he didn't get his merchandise on order as quickly as he should have when he needed merchandise.

Trial Examiner: In other words, Mr. Rumble, I take it it was Mr. Felker's responsibility to watch his stock in his particular department or in his divisions in his department?

The Witness: That is right.

Trial Examiner: And requisition when items were getting low?

The Witness: That is right.

Trial Examiner: Before he ran out according to demand.

Mr. Cavers: Now—

Trial Examiner: Where would he put in his orders for merchandise that he needed?

The Witness: He would put them in a check list and they would be—the orders would be wrote up by the unit stock control clerk.

Trial Examiner: In your store and transmitted to the warehouse?

The Witness: To Baltimore or Albany or may be direct from

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the source.

Q. (By Mr. Cavers) What do you call—do you call that a requisition? Supposing Mr. Felker wanted to order some merchandise for his department, what do you call the paper, whatever it is that he orders the merchandise, do you call that a requisition? A. Well, requisition from the warehouse, withdrawal from our local warehouse or stockroom.

Q. But, that isn't what you mean when you say that his merchandise was good—his merchandising was good. I gather what you mean when you say his merchandising wasn't good that he just never had the merchandise in Binghamton, he hadn't ordered it, is that right? A. If I can recall, yes.

Q. Now, what do you call it, an order or an requisition? A. Order.

Q. An order. Now, when Mr. Felker made out an order who did he give that order to? A. He didn't make out the order. The unit stock control clerk wrote the order. He had to enter his quantities that he wanted in his check list.

Q. Then the unit stock control clerk would make out the order from his check list? A. That is right.

Q. Then where did the order go after the unit stock control

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clerk made it out? A. Either to the pool or direct to the source.

Q. Well, what do you mean by the "pool"? A. Our warehouse in Albany or it might be Baltimore.

Q. Now, before this merchandise that is on the order is shipped to Binghamton, doesn't somebody pass upon it, isn't it reviewed by somebody on the way up? A. Not unless the division is overbought. I have to sign it.

Q. You have to sign it? A. Yes.

Q. I am speaking now when it goes beyond you? A. No.

Q. Do they always give him what he wants? Do they give you what you want when you send in an order? A. If you have open to buy, you get what you want.

Q. Was he overbought at that time? A. He has been overbought at several times.

Q. Then, if he was overbought he was amply stocked, was he not? A. He was amply stocked, but not balanced.

Q. Well now, on the way up on the order isn't it frequent that items are stricken off the sheet? A. Well, sometimes the pool can't ship, they run out of an item, yes, that happens.

Q. Or couldn't they strike it for other reasons? A. Well, I don't think that would happen in the store, no.

Q. Now, what do you mean when you say that his department was not clean or orderly? A. Well, his platforms were dirty, bins were dirty, he wouldn't keep his counters filled up, that is what I mean by clean and orderly.

Q. How long had this condition existed in his department? A. As long as I can remember.

Q. And with respect to his merchandising not being good, had that existed as long as you can remember, too? A. Quite some time, yes.

Q. Did you ever criticize Mr. Felker because of his poor merchandising? A. I have asked him to get merchandise on order, yes.

Q. How many times did you criticize him during the time that he was in your employ? A. I don't remember.

Q. Once? A. Oh, more than that.

Q. How many times? A. I don't remember.

Q. Was it frequent? A. I wouldn't say frequent, but at different times.

Q. Have you ever criticized him because that his department

wasn't clean and orderly? A. Yes.

Q. How many times? A. Several times.

Q. Several times. What do you mean by "several"? A. More than once.

Q. More than once. Twice? A. I don't remember how many times.

Q. Now, what was this other factor about the riding pool? A. Well, he lived out of town, if I remember.

Q. Mt. Rose, Pennsylvania? A. Mt. Rose, Pennsylvania, and he could never work any overtime because he had certain riders that had to ride with him, and any emergency come up where we had to do certain things, why, he never could help with that.

Q. Did I understand you to say that he could never work overtime? A. Well, I wouldn't say never work overtime, but he could seldom work overtime or would work overtime.

Q. Well, during the time that he was in your employ, how many occasions were there in which he told you that he couldn't work overtime? A. I can't remember how many times, but—

Q. Once? A. Yes.

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Q. Once? A. No, more than that.

Q. Twice? A. I would say several times.

Q. What do you mean by "several", three or four? A. I would say, yes.

Q. Now, other than the four reasons that you gave me, to wit, that his maintenance was poor, that his merchandising was not good, that his department was not clean and orderly, and that he was in a riding pool and wouldn't work overtime, were there any other reasons? A. Well, then when we convert the department, farm department to the toy department, Mr. Felker would—was not good on re-laying counters and making changeovers from one season to the other. His sales performance was good because that is about all he had—all he would do was sell.

Q. Well, in what respect wasn't he good in converting the farm to toys? A. He wouldn't do the physical labor that it requires to make those changes.

Q. Who did it? A. The display man, or we would send in extra help to do it or maybe the assistant manager. I have helped do it. My operating manager has helped do it.

Q. Well, were you all working down there?

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A. At times?

Q. And on how many occasions? A. I can't say how many occasions.

Q. Who was your display man in 1954? A. I can't recall his name.

Q. Isn't it a fact that you didn't have a display man in 1954? A. No, it is not.

Q. Well, who was he? A. Charles—I can look his name up for you. I can't give it to you right now.

Q. Do you know whether or not he was in the bargaining unit? A. I don't know.

Q. I show you General Counsel's Exhibit 4 and see if you can find his name on General Counsel's Exhibit 4 A. I will have to look his name up. He wasn't listed on there.

Q. He is not on General Counsel's Exhibit 4. Well— A. He may have been a week or two weeks there that we didn't have a man, but we have a man on basic all the time.

Q. Well, will you attempt before the close of the hearing to see if you can find his name? A. Yes, sir.

Q. And during what period that he worked. Now, was there anything else wrong with Mr. Felker?

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A. That is all that I can recall.

Q. After Mr. Felker was let go, why didn't you ever call him back to work? A. He wasn't interested in part-time work.

Q. Well, was he interested in full-time work, do you know he was interested in full-time work, didn't you? A. Yes.

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Q. (By Mr. Cavers) Now, after you—well, let's call it consolidated this farm equipment department, 87, with toys, which was 48, was it? A. No, 75, paint.

Q. You consolidated the farm equipment with the paint department? A. (Witness nodded head yes.)

Q. And you then put Mr. McGraw in charge of that one department consisting of those two divisions, I suppose? A. That is right.

Q. Is that right. Well, why didn't you retain both Mr. McGraw and Mr. Felker? A. I had no money or basic to support him.

Q. Well, now, didn't there come a time shortly after Mr. Felker left, in fact, within ten days when you hired a man by the name of McHugh to work down there with Mr. McGraw? A. Yes.

Q. Mr. McHugh was—has worked continuously since that time? A. I believe he has.

Q. And how much did you pay Mr. McHugh? A. I don't know his salary.

Q. And do you recall how much Mr. Felker was making at the time that he left your employ? A. Yes.

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Q. How much? A. Seventy dollars.

Q. Seventy dollars was what you call his base pay? A. Yes.

Q. And in addition to that, didn't you also pay him a commission on sales? A. Yes.

Q. And that commission was 4% in excess of $600 a week, is that right? A. I can't verify that quota. There is different departments that have different quotas.

Q. Now, when Mr. McHugh went to work there, isn't it a fact that you paid him $50 a week? A. I don't know what his salary is.

Q. And didn't you also pay him on a commission of sales in excess—on the same basis that you paid Mr. Felker? A. Yes.

Q. Now, in 1953, did you sell chickens in the farm equipment department; that is, baby chicks? A. Special orders only.

Q. Just special orders in '53. '53 now I am speaking of? A. Yes, they have never stocked baby chicks since I have been in the store.

Q. In 1953, did you also sell poultry, what I would call poultry equipment like feeders and so forth?

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A. Yes.

Q. 1954, you cut out all the poultry line, didn't you? A. Well, we have reduced it some, but not too drastically.

Q. Now, who made the decision to reduce the poultry line to take it out in 1954? A. Our regional merchandiser.

Q. But Mr. Felker didn't make that decision, did he? A. No, his performance prior to that would—his performance in sales—past sales performance would govern whether the line stayed or being eliminated.

Q. Well, wasn't it your previous testimony that Mr. Felker was a good salesman? A. Yes, I would say he was good.

Q. Well, during 1953, didn't he have excellent sales in the poultry line? A. I wouldn't say—I wouldn't know what lines—

Q. You wouldn't know how his sales were in the poultry. Now, like the chicks, and— A. I can't recall offhand, no.

Q. Can you recall that they were poor? A. In 1953?

Q. '53. A. If I remember rightly in '53, we didn't do too bad.

Q. You didn't do too bad? A. On sales.

Q. But, nevertheless, then in 1954 you cut out the poultry line? A. Well, I don't remember that specific line. I am talking about divisional sales.

Q. You are speaking— A. Not lines, I am not prepared to discuss lines.

Q. But, as I gather now from your testimony, and you correct me if I am wrong, that you had no complaint with respect to Mr. Felker's sales. A. I would say no.

Q. Well, did you know that prior to your coming to Binghamton that Mr. Felker had received several awards for outstanding sales?

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The Witness: I think I remember him showing me his pin. I think he had a pin, yes.

Q. (By Mr. Cavers) Does Ward's have what is known as a Ward's Sales Leadership Club? A. Yes.

Q. And is that comprised of the department heads who are

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the leaders in the sales in their departments within a given region? A. Yes.

Q. And can you tell the Examiner briefly what comprises the region within which your store is located? A. What the region comprises of?

Q. Yes.

Trial Examiner: Territorially.

Q. (By Mr. Cavers) What region are you in? A. Region 1.

Q. And what does Region 1 encompass? A. Region 1—well, it is the eastern—right straight down the map, eastern part of the United States, down into Florida, it goes over almost to the Mississippi River. It is all the stores in that region, 116 stores.

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Q. (By Mr. Cavers) Now, you had an employee in your employ here in Binghamton by the name of Gladys Witter? A. Yes.

Q. Where did she work? A. Well, she has worked throughout the store.

Q. And was she in the employ of the store when you came here? A. Yes.

Q. How long did she continue to work? A. (No response.)

Q. Well, until about August the 19th, 1954?

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A. Yes.

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Q. (By Mr. Cavers) What happened at that time, Mr. Rumble? A. We were forced to reduce our payroll and instructed Mr. Brancato on that—I instructed Mr. Brancato that he must get his payroll down because he was over his allowances of the payroll he was allowed, and he told me that in order to do that, he must let Miss Witter go, and I said, O. K., if we have to do it, we have to do it.

Q. Well, did you or did Mr. Brancato make the decision to let Miss Witter go? A. I made the final decision.

Q. And she was let go on August the 19th; when did you make that decision relative to August 19th? A. Well probably that day.

Q. And you notified her that same day? A. Yes.

Q. That the decision was made? A. No, I don't think so.

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Q. Well now, I didn't mean that you notified her, that she was notified that same day, is that right? A. Well I don't recall that she was notified the same day that the decision was made.

Q. Oh. What was the basis for the decision to let Mrs. Witter go? A. Well, we had to reduce our payroll and Mrs.—Miss Witter was unsatisfactory, so we decided that rather than to lay her off we would just release her.

Q. In what respect was she unsatisfactory? A. Well Mrs.—Miss Witter had worked in several departments in the store, hosiery department, the department head complained about her, she worked in unit stock control where

—checking the basics I found several errors and I would always go after the department head, Miss Brewer, and it would always reflect back to Miss Witter. We put her at the catalog order desk and her handling of orders was not good. She mixed up the orders, she made mistakes on writing orders, the 33-34 department head complained to me that she wouldn't fill up counters.

Q. What department is that, 33-34? A. That is, boys—boys' wear. We had her on the switchboard at times which she handled all right, but she made frequent errors in running tapes for the cashiers. That is all I can recall at this time.

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Q. Now, let's go back to the hosiery department head I think you testified complained. Who is the hosiery department head? A. Mrs. Marold.

Q. That would be Dorothy Marold? A. Yes.

Q. When did Mrs. Marold complain to you about Mrs. Witter? A. I can't recall the exact date.

Q. How many times did Mrs. Marold complained to you about Mrs. Witter? A. One time that I can definitely remember.

Q. With relation to the day that you let Mrs. Witter go, when did Mrs. Marold complain to you? A. Sometime before that.

Q. Well, can you to the best of your recollection, can you remember how long before that? A. I think it was a matters of weeks before that.

Q. And Mrs. Marold complained as I understand it, just one time? A. That is all I definitely remember of, yes.

Q. And on that one occasion, what did Mrs. Marold say? A. She complained that when she was filling up the counters she would mix up the sizes and that is about all I remember of that complaint.

Q. And that was the only complaint that Mrs. Mar[illegible] had?

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A. That is all I remember of.

Q. Now, in unit stock control— A. Yes.

Q. (Cont'd) ——what was the difficulty with Mrs. W[illegible]ter's work? A. In entering—in handling the check li[illegible] in the unit stock control, I complained several times [illegible] Miss Brewer as to the incorrect handling of the basi[illegible] and she always pointed out that it was Miss Brewer—[illegible] Miss Witter's errors.

Q. How many times did Mrs. Brewer complain? A. Well, Mrs. Brewer never complained. I complained [illegible] Miss Brewer.

Q. On how many occasions? A. I would say at leas[illegible] five or six different occasions.

Q. When? A. I can't recall the time.

Q. Well, with relation to. A. Whenever she worke[illegible] in that department, and I can't recall.

Q. Well, with relation to August the 19th? A. Wel[illegible] it was before that.

Q. Well, how long before that? A. I don't know. I would have to check our records. She moved around th[illegible] store quite frequently. I can't remember the dates o[illegible] times that she worked in that department.

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Q. Well, Mrs. Witter worked in practically all the de[illegible]partments in the store upon one occasion or another, hadn't she? A. Yes, she worked in several departments, yes.

Q. Now, with respect to her catalog order desk, what was the difficulty there? A. Miss Julian complained that she had mixed up the orders and incorrect order writing, we would get a report back from Albany on incorrect order writing, that is how that happened to be found.

Q. When did Miss Julian complain to you? A. I can't give you the dates on that either.

Q. Miss Julian now is in your employ? A. No.

Q. And when did she leave your employ? A. I don't have that date here.

Q. Could you supply us with that date before the close of the hearing if you would please? A. Yes, sir, uh. huh.

Q. Now, how many occasions did Miss Julian complain? A. I don't remember.

Trial Examiner: Did Miss Julian leave after August 23rd?

The Witness: Well, Miss Julian got sick on June 10th then she came back for a couple of weeks and then left.

Trial Examiner: She wasn't there then on the day that

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Miss or Mrs. Witter was discharged?

The Witness: No, she wasn't, no.

Q. (By Mr. Cavers) You say that Mrs. Julian became sick on June the 10th? A. Yes.

Q. Now, did she complain to you about Mrs. Witter before she took sick? A. I don't remember if she complained to me or whether she complained to Mrs. Brancato, but there was a complaint that got to me on the mail order desk.

Q. Did that complaint get to you on the payroll—on the mail order desk before Mrs. Julian took sick? A. Yes.

Q. How long before? A. I don't know.

Q. Have you any idea? A. No, I don't.

Q. Was that the only—one complaint from Mrs. Julian? A. That is all I remember, yes.

Q. Now, I think you also testified that the department

head in Department 33-34, boys' wear, complained, right? Who is that? A. Mrs. Irene McTigue.

Q. How many times did Mrs. McTigue complain? A. One time that I remember.

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Q. When was that? A. I can't give you the date.

Q. When with relation to the time that Mrs. Witter was discharged? A. I can't tell you. Before—sometime before.

Q. What was wrong with Mrs. Witter's work on the switchboard? A. She handled the switchboard all right as far as the switchboard went. She made errors in running tapes.

Q. Will you explain that to the Trial Examiner. A. Well, the switchboard operator, one of her duties is to run the cashier's tapes that come from the cash registers and all different divisions are rang on the registers and you run those tapes on an adding machine and break it down by divisions, like 10, 21, 14 might all be rang on the same registers. That girl breaks it down as to divisions the total amount of the tape.

Q. Well, the operation of the switchboard wasn't Mrs. Witter's regular work, was it? A. No, she was—

Q. Now, she was let go August the 19th. She hadn't worked on the switchboard since back in—around April of '54, had she? A. I don't remember.

Q. Well, do you recall—

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A. We used her—we used her just about any place we had a vacancy, we would use her where we could.

Q. Yes, but can you now recall of her working on the switchboard either during May, June or July of '54? A. No, I can't give you any time on that, I don't remember

Q. Did you reprimand Mrs. Witter for her work in the stock control unit? A. No.

Q. Did you reprimand her for her work in the catalog department? A. No.

Q. Did you reprimand her for her work in the boys' wear department? A. No. I sent her—every time there would be a complaint I would move her to another place.

Q. So you never ever complained to her, is that— A. Yes, I complained to her.

Q. When, Mr. Rumble? A. I told her about—Miss Julian got sick on June 10th, somewhere between June the 10th and July 1st she asked to be catalog department manager, and at that time she came into my office and asked for that job. I explained to her that we had used her all over the store and she was not satisfactory, and I didn't think she could handle the catalog job. I told her at that time that we had nothing

for her and she better look for another job.

Q. At that time, did you tell her that certain employees had complained about—to you that they didn't want to work with her? A. No, I didn't.

Q. You didn't? A. I don't remember that, no. I wouldn't say I didn't, but I don't remember that discussion.

Q. Well, let's see if I can refresh your recollection a little bit, and didn't it on that occasion, Mrs. Witter say to you, "Who told you that they didn't want to work with me?" Do you recall her saying that to you? A. No, I don't.

Q. Do you recall her saying, "That I am going to go down on the main floor and ask the department heads down there who doesn't want to work with me," do you recall

that? A. No, I remember that she was quite disturbed about being considered unsatisfactory and she went out of my office in quite a huff, but I don't remember what she said.

Q. You don't recall what she said? A. I don't recall what she said.

Q. Do you recall Mrs. Witter saying to you—strike that. Do you recall saying to Mrs. Witter after she told you she was going down on the main floor and find out from the department heads who didn't want to work with her that if

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she went down there you would fire her? A. No.

Q. Now, was Mrs. Witter discharged? A. Yes.

* * *

Q. Now, other than these incidents that you have related to me concerning the work of Mr. Felker, was there anything wrong—was there anything else that was wrong with her work that entered into your decision to discharge her?

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A. Who did you say?

Q. Mrs. Witter, was there anything else wrong with Mrs. Witter's work that was a factor that entered into your decision to discharge her? A. No, I can't recall anything else.

Q. Do you recall Mrs. Witter wearing a union button in the store right immediately after the election, the election was on August 17, on the 18th or 19th? A. No.

* * *

Q. Do you recall an occasion before the election when Mr. William Buchholzer, the rather heavy set gentleman

sitting in the first row, came up to you in the store and introduced himself to you? A. Yes.

* * *

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CROSS EXAMINATION:

Q. (By Mr. Dickson) * * *

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You have mentioned with regard to Mr. DuFour that he could direct the employees in the department. I will ask you whether or not that was true of the other department heads in the Binghamton store? A. Yes.

Q. You have said with regard to him that he could recommend hiring and that weight would be given to his recommendation. I will ask you whether or not that was true of the other department heads in the Binghamton store? A. Yes.

Q. You said with regard to Mr. DuFour that he interviewed prospective employees for his department before they were sent up to the office. I will ask you whether or not that was done by the other department heads in the Binghamton store? A. No, not usually, no.

Q. Was it ever done? A. I can't remember of it being done.

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Q. Well now, was there anything specific in the fact that Mr. DuFour interveiwed these other—these prospective employees and the other department heads did not in your experience that gave Mr. DuFour's recommendations any greater weight and if so, what was it? A. Well, Mr. DuFour—it is the only department in the store where you have a real active outside selling organization, and they have got to have men that they are convinced will make

the calls and do the job for them outside. That is most of the—these men that Mr. DuFour interviewed, that was their responsibility to make outside calls on the prospective customers.

Q. For the sale of farm equipment? A. Appliances. Of appliances.

Q. Or appliances, I mean to say. And most department heads, I take it from what you say, did not have outside work to assign? A. That is right.

* * *

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Q. Mr. Rumble, * * * As to whether department heads interviewed applicants before they were sent up to your office, let me ask the more general question, whether department heads generally did or did not interview applicants before it was finally decided to hire. A. Yes, that happens like if I interview a fashion girl or a credit girl, quite often I would send them to the department heads and have them talk to them before I hired them.

* * *

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Q. * * * You spoke about this new basic organization coming out. I believe it was the end of July, 1954, was that right, or early in August? A. August.

Q. In August, 1954. Will you explain to the Examiner what you mean by a "basic organization"? What is it? A. Well, a basic organization is set up by the New York office, operating people, telling you how many people that you can have depending on your projected sales what they anticipate you are going to do for that next six months. Now, probably the year before's performance has a lot to do with it. Then there is sometimes— some-

times there is other things that—that enter into it as to maybe your present trend or they might be building an air base in your town where you anticipate you are going to do a lot more than you did the year before. Then, they were increased, they would increase your basic organization; that is, basic people on the payroll that you are allowed.

Q. Now, are those—when you speak of basic people, are those what you consider permanent employees? A. Yes.

Q. Now, in addition to basic people or permanent employees do you have others?

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A. Yes, we have non-basic.

Q. Now, what is their status, what do they do? A. Well, non-basic people you use according to the amount of earned payroll allowance you get over your basic sales. Do you want me to explain that further?

Q. I think you better, yes. A. Your basic number of people also support, a basic sales picture, so much sales support in basic permanent organization. If your sales are running ahead of that basic sales figure then you get a percentage allowance. The regional operating department gives you an allowance, a percentage of what you exceed your basic sales, that you can hire extras, extra people. You might double your basic sales and when you do that, you have got to—got to keep adding extras, extras who are under the supervision of department heads and basic people.

* * *

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Q. (By Mr. Dickson) * * * If your sales are running below the projected, what do you have to do with regard

to your extra personnel, if anything? A. You have got to cut your payroll and get in line with that basic if it means cutting off every non-basic person right down to your basic organization.

Q. Now, what was the situation early in August, 1954, with reference to whether you were running ahead of, equal to, or behind your projected sales? A. Oh, we—we exceeded—why, we cut back at that particular time, we exceeded our payroll allowance that week $111.

Q. Well, tell me how that was figured and specify what week

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you are speaking of. A. The week of August—I don't know, August 12, 10th or 12th.

Q. Well, approximately that time? A. Approximately August 12th.

Q. All right. Now, can you explain what happened there that that—go ahead and tell what the facts were in that regard. A. Well, we used $111 more in payroll than we had earned and that is when I instructed Mr. Brancato that he had to cut the payroll back.

Q. Now, when you speak of having $111 more than in the payroll than you have earned, is that computed with reference to some certain percentage of sales? A. That is a percentage above your basic sales, yes.

Q. And how much extra you can hire is determined, is it not, by a certain percentage of the excess sales over basic, isn't that right? A. That is right.

Q. And you had hired too many by $111 worth? A. That is right.

Q. That is $111 a week, is it? A. Yes, that is figured weekly.

Q. Now, when the basic organization came out early in August of 1954, there were two departments that were

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consolidated, 75 and 87, isn't that right? A. Yes, sir.

Q. And up to that time, they had been separate, right? A. Yes.

Q. Now, who was the department head of Division 75? A. Joseph McGraw.

Q. And Mr. Felker was the head of Division 87, right? A. Yes.

Q. Now, when those were consolidated, could you retain those two department heads? A. No.

Q. You would have just one after that, right? A. Right, yes.

Q. So Felker or McGraw had to go, is that correct? A. That is right.

Q. Now, at that time, did you have enough allowable payroll, whatever it is called, to keep Mr. Felker on as a full time salesman below a department head? A. No.

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Q. (By Mr. Dickson) There has been a reference to the

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fact that a [illegible] time thereafter Mr. McHugh was hired, was he hired as a full-time employee? A. No, it was not intended that he would be full-time, or he is not—he is still non-basic right now.

Q. He is still on the payroll, is he? A. Yes.

Q. Well now, will you state what the circumstances are with reference to his having continued on the payroll? A. Well, we had some—we had a fire man resign, we also had a hardware man resign.

Q. Have you replaced those people? A. No, I haven't.

Q. Did that make any difference with regard to whether or not you could give Mr. McHugh full-time employment? A. Yes, when your regular basic people position is vacant that gives you more allowance, you can use that money for extras or maybe two or three extras to—you can use that money, that is our basic. If it is 65 or 70 dollars to cover that position until you make a suitable replacement.

Q. And state whether or not any of that has been used to give Mr. McHugh employment? A. Yes, that is right.

* * *

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Trial Examiner: Is he now part of the basic within the basic?

The Witness: No, he is not.

Trial Examiner: Within the basic salary structure?

The Witness: He is non-basic.

Trial Examiner: And has been?

The Witness: Yes.

Trial Examiner: All right.

Q. (By Mr. Dickson) But, he has actually worked out that he has been employed full time, is that right? A. Yes.

Q. And still is? A. Due to the circumstances.

* * *

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Q. (By Mr. Dickson) There has been some discussion on direct examination about a reduction in the poultry line between 1953 and 1954; will you state what, if anything, was done in that regard? A. I can speak only generally. I know that the lines have been reduced be-

cause our past sales experience have not been good on certain items in the poultry line such as may be—instead of carrying six numbers of feeders we might cut to three or two, six waterers, we might cut to four. I know some of that has been done.

Q. Now, was that peculiar to your store or was it general?

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A. No, that is general.

Q. Throughout what area, if you know? A. I would say the company.

* * *

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Q. I think you said in answer to one of Mr. Cavers' questions that Mrs. Witter had operated the switchboard satisfactorily as distinguished from running cash register tapes, is that right? I mean— A. What was that again?

Q. (Cont'd) —that she operated the switchboard satisfactorily, considered by itself? A. Yes.

Q. Is that right? A. Yes, answered calls and transferred calls.

Q. Did you ever offer her a job on the switchboard? A. Yes, we offered her a permanent job.

Q. And what did she say to that? A. She refused that job.

* * *

RE-DIRECT EXAMINATION:

Q. (By Mr. Cavers) In answer to a question by Mr. Dickson I believe you testified that there were instances in which Mr. DuFour recommended applicants for employment that they

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be hired and that you didn't go along with his recom-

mendations. How many such instances do you now recall? A. All applicants that he interviewed have to pass the credit—the reference check.

Q. I believe you might have misunderstood my question. You said that your testimony was to this effect that there were instances in which Mr. DuFour recommended people for hire and which after checking you didn't go along with his recommendation. Now, how many such instances were there in which you didn't go along with Mr. DuFour's recommendation? A. Well, there might have been several that Mr. Brancato would reject, but there is only one instance that I remember that the applicant was rejected because he didn't pass the reference check.

Trial Examiner: Which came first, the recommendation by Mr. DuFour or the reference check?

The Witness: The reference check comes second.

Trial Examiner: Second?

The Witness: Yes. After they fill out the application and we don't check anybody unless we intend to hire them.

* * *

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Q. Now, when it is necessary under such conditions to reduce your force, is it your procedure to reduce your basic force or to reduce like your extras, your reserves and your part-times, do you reduce the extras, the reserves and the part-times first? A. Well, you have to have so much part-time help because your influx of sales on Thursday, Friday and Saturday, you have got to have extras. You can't have the same number of people in the store every day in the week because that is not

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the way the sales run. You have to maintain some extras for those busy times.

* * *

Mr. Cavers: *Did you place an advertisement, Mr. Rumble, for help in the Binghamton Press on Friday, October the 27th, 1954, did your store?*

A. Let me see it.

Q. I show you what has been marked as General Counsel's Exhibit 5 for identification. A. Yes.

Q. And did that advertisement read—well, it reads—I will read it: "Help, men and women, salesmen and sales ladies, full or part time, experience necessary, apply at store office, Montgomery Ward." It was your store that placed this advertisement in the Binghamton Press? A. Yes, sir.

* *

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Q. Now, I believe you said that the reason—in answer to a question by Mr. Dickson that you couldn't keep Mr. Felker on other than a—on a lesser paying job because you didn't have the money. A. That is right.

Q. Now, I believe you also testified that Mr. McHugh after he was hired did not work full time. A. No, I didn't say that.

Q. Oh, did he work full time? A. I can't swear to that, but—

Q. Well, isn't it a fact that he has worked full time ever

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since he was hired? A. I imagine, yes, yes, he has worked.

Q. Do you recall—I don't know whether I asked you

this morning—whether or not Mr. McHugh was hired at $50 a week. A. I don't know what his salary was.

Q. Mr. McHugh is still in your employ, isn't he? A. Yes.

* * *

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RE-CROSS EXAMINATION:

Q. (By Mr. Dickson) * * *

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Q. Now, with reference to General Counsel's Exhibit 5, the advertisement of August 27th, 1954, during the year 1954, how frequently did you advertise for help, if you recall? A. Many times.

Q. Well, can you state it in terms of average, once a month, ten times a month or what? A. I would say it averaged once every two months, we'll say.

Q. Were those advertisements closely correlated with whether or not you needed help at the particular time? A. No.

Q. What decided you then to run an ad or not? A. Well, that is the general practice of building a reserve

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for fall, Ward week, October, November, December.

Q. Now, you put on people, don't you, for fall—for the Christmas rush, isn't that right? A. Yes.

Q. And when do you usually—and you also have a sales promotion known as Ward week, is that right? A. Yes.

Q. In 1954, when did Ward week come? A. October 15th.

* * *

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Q. Now, would you or did you actually increase your payroll on August 27th or shortly thereafter, increase

your total payroll, if you know? A. No, I don't think so. I don't actually know, but the—I don't actually know about the dollars, but I don't think so.

* * *

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L. A. McMAHON a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address, please. A. L. A. McMahon, 44 Roosevelt Avenue, Binghamton.

Q. Are you here today pursuant to a subpoena issued by the General Counsel, Mr. McMahon? A. That is right?

Q. Were you ever employed by Montgomery Ward & Company, Inc., in their Binghamton, New York, store? A. Yes, sir.

Q. Do you recall about when you were first employed? A. Approximately the 1st of April.

Q. What year? A. '54.

Q. What was your job at that time, Mr. McMahon? A. Appliance salesman.

Q. Was that in Mr. DuFour's department? A. That is right.

Q. Now, can you tell the Examiner the circumstances surrounding your going to work at Montgomery Ward at that time? A. Well, I was employed before I went there and I was going

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to make a change, and at that time Montgomery Ward ran an ad in the press, in the Binghamton Press for help in the

applicance department. I called up and talked to Mr. Brancato and he talked very favorably of my getting a job there and he told me to come over and see Mr. DuFour.

Q. Yes. A. (Cont'd)—which I did. And Mr. DuFour arranged for me to go to work.

Q. Now, can you tell us when you talked—he called up over the telephone and talked to Mr. Brancato, can you recall any of the questions that Mr. Brancato asked you? A. I don't think he asked me very many questions. I asked him more, I think.

Q. Well, can you recall what you asked him, Mr. McMahon? A. Well, I asked him what was the nature of the job as far as the—how much money a person could make, what the potential was. He assured me that it was very good, and, of course, I had given him an idea of my own background, selling experience and he—he assured me that it was a good setup.

Q. And as I understand your testimony then, he told you to come over and see Mr. DuFour? A. That is right.

Q. And did you go over then and see Mr. DuFour? A. Yes, I did.

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Q. And where does he have his department in the store, Mr. DuFour? A. In the basement.

Q. You had a conversation with Mr. DuFour when you went down in the basement? A. That is right.

Q. Did Mr. DuFour ask you any questions? A. Yes, he wanted to know what experience I had, and that is about all.

Q. Did he explain to you the nature of the job? A. Oh, yes, yes, the selling and the outsides as well as on the floor.

Q. Was there any mention made at that time in your conversation with Mr. DuFour with respect to the amount

that you would receive, your money or your wages? A. The rate of commission?

Q. Yes. A. Yes, we did discuss that.

Q. Did Mr. DuFour tell you what that would be? A. Yes, he did.

Q. Was there anything said by Mr. DuFour to you about your going to work there then for Ward's at that time? A. Yes, he said I could come to work right along as soon as I was available. I told him that I wasn't quite ready, that I would let him know just when I could come.

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Q. And subsequently, did you tell him when you could come to work? A. Yes, a few days later I stopped in and told him just what day I could come and see—and he says all right.

Q. And did you then come to work on the day that you told him you would come? A. That is right, that was either the first Monday in April or the last Monday in March, I am not sure which.

Q. Now, in between the time that you talked to Mr. Brancato and the time when you reported for work on a Monday morning in that interval, did you talk to Mr. Brancato again? A. No, I didn't.

Q. In that—up to the time that you—your first day of work for the company, had you talked at all to Mr. Rumble? A. No.

Q. The store manager? A. No, sir.

Q. When you went to work, were you the only salesman working under Mr. DuFour? A. No, there were others.

Q. Who told you what time to come to work? A. Mr. DuFour.

Q. Who told you what to do in the department? A. Mr. DuFour.

Q. Did you ever hear Mr. DuFour scold or reprimand any

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of the employees in that department? A. Did I ever hear him?

Q. Yes. A. Why, perhaps, yes, I would say.

Q. How long did you continue to work for Ward's? A. September 11th, 1954.

Q. And what happened at that time? A. I resigned to get a better job.

* * *

CROSS EXAMINATION:

Q. (By Mr. Dickson) Mr. McMahon, did you fill out an application for employment at Montgomery Ward? A. Yes, I did.

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Q. And did you put any references on that? A. Yes.

Q. Do you know whether or not those references were checked? A. I know one of them was because I met one of the fellows afterwards who told me he had a letter and replied.

* * *

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ALBERT LINDSEY a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address. A. Albert Lindsey, 100 Home Avenue, Binghamton, New York.

Q. Will you spell your last name. A. L-I-N-D-S-E-Y.

Q. And your middle initial is "A". A. "A".

Q. Were you ever employed by Montgomery Ward in their Binghamton, New York, store? A. Yes.

Q. Do you recall when you first were employed? A. In the middle of June, 1954.

Q. And what was your job at that time, Mr. Lindsey? A. Appliance salesman.

Q. Is that what is known as an inside-outside salesman? A. Yes, we were one day on the floor, the next day out.

Q. And that is in Mr. DuFour's department? A. Yes.

Q. How did you come to work for Montgomery Ward? A. After graduating from the seminary in Johnson City between my getting the position which I now have and which I studied for, I was looking for work, and I went up to the

New York State Employment Office and they sent me over to Montgomery Ward.

Q. Now, when you went over to Montgomery Ward, where did you go in the store? A. To the office.

Q. And is there a switchboard near the office? A. Yes.

Q. And did you see anybody at the switchboard? A. Yes.

Q. Is that person in this courtroom? A. Yes.

Q. What is her name or person's name? A. Miss Winters.

Q. Mrs. Witter. And what, if anything, did you say to Mrs. Witter? A. I asked her for an application, job application.

Q. And what, if anything, did she do? A. She gave me the pencil and the application and told me to fill it out and then I filled it out and brought it back to her.

Q. Do you know what she did with that, if anything? A. Well, she sent me down to Mr. DuFour with it.

Q. Do you know whether or not before she sent you down to Mr. DuFour she talked to anybody else? A. No, because I stepped out into the other room, out into

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the furniture department to make out the application.

Q. Well, is your answer no that she didn't talk to anybody else before she sent you downstairs, or is your answer that you don't remember that— A. Well, I wasn't in the room.

Q. So you don't know, in other words. A. I don't know.

Q. You took it downstairs to whom? A. Mr. DuFour.

Q. And did you give him the application? A. Yes.

Q. Did you have a conversation with him at that time? A. Yes, I did.

Q. What did he say to you and what did you say to him? A. He asked me about some of the references, where I had worked, about my experience. We discussed the commission and how the draw worked, and he told me that the references would be checked and that I was to come to work the following Thursday if I wasn't notified before then.

Q. Did you come to work then the following Thursday? A. Yes.

Q. Now, after you went to work then your job was what they call an inside-outside salesman? A. Yes.

Q. Who told you when to work inside and when to work outside?

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A. Well, we were told when we first started that we would be on one day and off the next.

Q. Who told you that? A. Mr. DuFour.

Q. Now, were there ever any occasions while you worked in the applicance department in which you were told to do work other than working inside selling or outside selling? A. Outside of selling?

Q. Yes. A. We were asked to come in at 8:30 in the morning.

Q. Do you know—who asked you to come in at 8:30 in the morning? A. Mr. DuFour.

Q. And what time does the store open in the morning? A. 9:30.

Q. What time do the other employees come in, do you know? A. Around 9:15.

Q. Now, did you ever take inventory? A. Only once I helped Mr. DuFour take inventory.

Q. Who told you to help him? A. He did.

Q. Mr. DuFour ever scold or reprimand you? A. Yes, sir.

Q. And how many occasions while you worked there? A. Several occasions.

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Q. Do you recall what he scolded you for or reprimanded you for? A. Yes. On one specific occasion it was for not doing enough on the outside.

Q. You mean not making enough sales? A. Not making enough sales or enough calls.

Q. Well, who was the one that told you what to do? A. Mr. DuFour.

Q. During the time that you worked there, did Mr. Brancato ever tell you what to do? A. No.

Q. During the time that you worked for the company, did Mr. Rumble ever tell you what to do? A. No.

Q. How long did you continue to work for the company? A. Five weeks.

Q. What happened at that time? A. I was released.

Q. Who released you? A. Mr. DuFour.

Q. Did you have a conversation with him at that time, Mr. Lindsey? A. Yes.

Q. What did he say to you and what did you say to him? A. He told me that because my sales weren't big enough to

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get my draw, that I would be released.

Q. What, if anything, did you say? A. I didn't say anything.

Q. Well, after you had this conversation with him, did you just leave or what? A. No, I finished out the day.

Q. Did you come back the next day? A. No, I didn't come back to work.

Q. That was your last day after this conversation with him, is that right? A. Yes.

Mr. Cavers: No further questions. I have just one more question if I may, Mr. Lindsey.

Q. (By Mr. Cavers) Mr. Lindsey, I think you testified that you went to work at Ward's shortly after you got out of school? A. Yes.

Q. What school were you going to? A. The Baptist Bible Seminary in Johnson City.

Q. And is that a school that you go to learn to become a minister? A. A minister, missionary and so forth.

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WILLARD KNOWLTON a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address, please. A. Willard Knowlton, 28 Adams Avenue, Endicott.

Q. Endicott, New York? A. Yes.

Q Are you here pursuant to a subpoena issued by the General Counsel? A. Yes, sir.

Q. Were you ever employed by Montgomery Ward & Company at their Binghamton, New York, store? A. I was.

Q. When did you first go to work for Montgomery Ward?

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A. The first time I worked for Ward was a part-time job in 1953.

Q. And how long did you continue in the part-time work? A. That was just for two weeks, during Christmas.

Q. In 1953. Were you ever re-employed by Montgomery Ward after that? A. Yes, sir.

Q. When? A. Sometime during June, I believe it was.

Q. Sometime what? A. June.

Q. Of what year? A. 1954.

Q. How did you know—how did you happen to go to work for Montgomery Ward at that time? A. I just dropped in the store on a chance that they may have something.

Q. Did you talk to anybody when you went in the store? A. I talked to Leonard DuFour.

Q. Mr. DuFour? A. Mr. DuFour.

Q. Do you know—was that down in the appliance department? A. In the appliance department, yes.

Q. Now, can you tell in your own words what you said to Mr. DuFour and what Mr. DuFour said to you?

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A. Not close. I remember that—I asked him if he had an opening for appliance salesman, and he asked me if I had read the ad.

Q. What did you— A. (Cont'd) —in the paper. I told him, no, that I hadn't seen the ad, and I gave him some of my background of what I had done, and I told him that I had worked at Ward's for a couple of weeks previous to that, and he told me to go upstairs then in the office, and I saw the girl, I believe it was a girl at the desk there, one of them—I don't remember which one—and she looked for my application that I already had in there a few months before that and they couldn't find it, and I returned back downstairs and talked to Mr. DuFour and he told me to drop back in a couple or three days, I can't remember exactly what—what the dates were on that.

Q. Yes. A. (Cont'd) —But, at any rate, the time that I dropped back I met him on the sidewalk out front. I think they were watching windows, they were— or, Mr. Brancato, oh, I believe it was out front and Mr. DuFour, and he told me that he thought that I would do.

Q. Who told you that, Mr. DuFour or Mr. Brancato? A. Mr. DuFour, I believe. He was the one I talked to on appliances.

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Q. Yes? A. (Cont'd) — And we went on downstairs and—

Q. You said we went on downstairs, who is "we"? A. Myself and Mr. DuFour.

Q. Yes. A. And I talked for a half an hour to him, perhaps he told me the procedures of the store, and after that I went upstairs and made out a new application, I believe.

Q. Yes. A. (Cont'd) And then a few days later—I can't remember whether I was called for or whether I came back and started to work.

Q. Now, you said that after you talked to Mr. DuFour, you went upstairs and made out an application. Where did you get the application blank? A. Some place in the office there, I don't know who gave it to me.

Q. What did you do, did you fill the blank out then? A. Yes, sir.

Q. What did you do with it after you filled it out? A. I don't remember.

Q. Well, do you recall whether you left it there or whether you took it back down to Mr. DuFour, or can't you recall? A. I can't recall whether I left it there or took it to him.

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Q. And then after that I gather from your testimony you came back to the store two or three days later and you saw Mr. DuFour and Mr. Brancato out in front? A. Yes, sir.

Q. And that is when Mr. DuFour took you downstairs? A. Yes, sir.

Q. You talked to him some more. Now, when you were downstairs talking to Mr. DuFour was there any

thing said about the method or the amount of pay that you would receive? A. Yes, sir.

Q. What did he tell you? A. He told me about the rate on the commissions and the different products that they had, and what would be—what I would have to do what was expected of me.

Q. And then what was said about a time for you coming to work; was there something said about that do you recall? A. No, I didn't say, but—well, what do you mean by "time"?

Q. Well, did you go to work that day you were down stairs with him? A. I don't remember whether I went to work that day or whether he told me to come back in a couple of days later and start.

Q. Well, do you recall whether or not you did come back in a couple of days or whether you went to work that day?

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A. I don't remember whether I started that day. The second time—I don't remember whether I started that day, the second time or whether I came back the third time and started to work, I can't remember.

Trial Examiner: Mr. Knowlton, try to keep your voice up a little bit, the reporter is required to transcribe your testimony and he is having a little difficulty hearing you.

Q. (By Mr. Cavers) Now, after you did start on the job, who told you what to do? A. That was Mr. DuFour.

Q. Who told you what time to come to work? A. Mr. DuFour.

Q. Did he ever take inventory? A. Yes.

Q. Who told you to take inventory? A. That was Mr. DuFour.

Q. Now, while you worked for the company, did any

one ever scold you or reprimand you in any way? A. Yes.

Q. Who? A. Mr. DuFour.

Q. What for? A. Oh, two or three occasions I was late.

Q. Yes.

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A. And my sales weren't up where they should have been.

Q. Your sales weren't up? A. He said that I had to get my outside work built up a little more.

Q. Now, did you ever have any occasion while you worked in the appliance department to request time off? A. I think I did, but I can't remember what it was for now. Once I had to appear to see a lawyer who was on a case of my own personal case, and that was in the evening, and it was—oh, 90 miles from here, and I had to leave that evening, and I couldn't get ahold of anyone at the store to notify them, and I was gone the following day and came in the following morning after that. Do you follow me?

Q. Yes. A. And when I came in I think I was in there about quarter of 8:00 in the morning, I just got back in town from traveling that night, and no one was there then, and—now, let me think—I think the first person I talked to was Mr. Brancato that morning.

Q. Yes. Now, I want to stop you for a moment. When was this, do you recall when? A. Oh, along the second week in August, some place along in there.

Q. Well, how long did you continue to work for the company? A. That was the last day.

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Q. This was—the incidence that you are now relating occurred the last day that you worked for the company? A. Yes.

Q. All right. Now, I think that you testified that you got there early in the morning, about a quarter to 8:00, and Mr. Brancato came down and he was the first one you talked to, is that right? A. Yes, sir.

Q. All right. What did you say to him, to Mr. Brancato, and what did he say to you? A. He asked me if I had seen Mr. DuFour, and I told him no that I didn't think he was in yet, and after that he didn't say anything, and it must have been a few minutes later that some of the other men downstairs came in. I believe one was Mr. Bright, Jim Bright, and he told me that I was fired.

Q. Jim— A. Jim Bright, and I hadn't heard anything of it yet, and a few minutes later Mr. DuFour came in and told me that I was through.

Q. Did he say anything other than you are through? A. Well, he told me that that was my last day.

Q. Was any reason given to you? A. Yes.

Q. Why, what reason? A. For taking the time off and not notifying them.

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Q. Did you work the remainder of the day? A. No. I didn't.

Q. You left then, is that it? A. In about half an hour.

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WESLEY JAMES BRIGHT a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address, please?

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A. Wesley James Bright, B-R-I-G-H-T, Barton, R. D. 1, New York.

Q. Are you here today pursuant to a subpoena issued by the General Counsel? A. Yes.

Q. Were you ever employed by Montgomery Ward & Company, Incorporated? A. Yes sir, I was.

Q. And you worked in their Binghamton, New York, store? A. That is right.

Q. When did you first go to work for Montgomery Ward, Mr. Bright? A. Oh, sometimes in the last part of March.

Q. Of what year? A. 1954.

Q. How did you happen to go to work for the company at that time? A. I was looking for employment and I knew that Montgomery Ward was a good place to go to work for—at least that is what I thought at that time—and I had a point on different other companies to apply for a job and Montgomery Ward was one that was on the list, so I went down in the basement in Montgomery Ward's to talk to one of the salesman down there which I had met in my previous job, and I thought I could get—see if I could get in his department or if I

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could go to work for the store. So after him and I was talking for awhile, why, he picked up the telephone and called, I think it was Mr. Bra. ato upstairs, and told him who I was and what he thought of me and so forth, and they talked on the telephone and then he told me he had no openings there, but he would—but they did in the front part of the store, and for me to go up and talk to Mr. Brancato.

Q. Did you then go up and talk to Mr. Brancato? A. Yes, I did. I went up and talked to Mr. Brancato and asked him the nature of the job, and he told me that it was outside selling, and so he asked me if I had sold and I told him I had sold outside. Then I asked him what was the amount of salary that—he had told me that they had, the two salesmen that were working there, had left, and so I wanted to know what they made, and so he got the record and showed me. He told me what each one of them had made the following year, and so I told him that sounded good so he told me to go down and talk to Mr. DuFour.

Q. Did you go down and talk to Mr. DuFour then? A. No, I asked him, shouldn't I make out an application, and he said, why, yes, and then he turned to Mrs. Winters and told her to get me an application. So she got the application for me and I made it out and Mr. Brancato wasn't there, so I went down to see Mr. DuFour, and I went downstairs

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and I asked and I found Mr. DuFour and told him who I was, and he talked with me, and he told me the nature of the job, the outside-inside selling, and that it was a drawing salary, how much a man could make, and so forth and so on.

And he asked me questions about myself and then he picked up the telephone and asked for Mr. Brancato. When he received Mr. Brancato, he told Mr. Brancato that he had found a man that he was looking for and that I was coming to work that evening, so that was a Thursday, so I went to work. I didn't really work, but I went down to get a good idea of what went on in the store.

Q. You said you went down to get a good idea of what went on in the store; when did you do that? Was that

the same day or the next day? A. That evening. It was Thursday and the store was open, so I went down to the store and—to get an idea of how much traffic came in and out and what the salesman had to do.

Q. And did you also go to work—come to work the next day? A. The following morning I officially went to work, yes.

Q. And then you worked from then to— A. That is right.

Q. Now, after you—the following day when you commenced your employment, who told you what time to come to work?

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A. Mr. DuFour—the following day I came in around 9:15 and Mr. DuFour told me that from then on I was to come in at 8:30. He had not mentioned that during the time of the conversation for hire, but he told me that all his salesmen had to come in at 8:30 to dust and clean up.

Q. Now, what time, do you know, did the rest of the employees of the store report for work? A. That is what I asked him. I said the others came in and he says, well, he didn't care, that he didn't care, that his salesmen had to come in at 8:30, and dust and clean up even though the others came in at 9:15-9:25.

Q. Now, during the time that you worked for Mr. DuFour, did he ever scold you or reprimand you? A. Yes, he did.

Q. On how many occasions? A. Well, there was quite a few occasions. I couldn't say the exact number because there was quite a number of them.

Q. How long did you continue to work for the company? A. I think it was around September the 11th.

Q. Of 1954? A. '54.

Q. Now, in the period of time that you worked there, how frequently would you say that you were reprimanded? A. Well, that all depended on what the—the thing was. I mean, it wasn't—we wouldn't say the same thing each

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time, it would be something else, something different.

Q. Well, were you reprimanded once a week or once a month? A. Well, if you want to put it out over a period of time and by the number of times, I would say it would come to about a week and a half.

Q. And what were you reprimanded for or scolded for? A. Well, it would be in what I would think would be a minor error, that any individual would make being human, would make a minor error.

Q. Well, can you recall what any of these minor errors were? A. Well, each item in the store, has a number and sometimes, why, you would get an 83, say, would be mixed with 38 by counting stock or by writing up on the floor there; you had to make a list of the items that you had. Well, all the time it wasn't our fault. The tickets had been gummed up before, all of us salesmen came to work, and a lot of times it was—we would copy it off the ticket, but it wouldn't be our fault, but yet we would get bawled out for it.

Q. Mr. DuFour ever talk to you about your sales? A. Yes, he figured that coming from Glens Falls that we should cover as much ground and territory that he did up there, and that was quite a discussion there between him and I because, I tried to tell him that in the triple cities

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it was pretty hard to cover the same ground that you would up in Glens Falls because if you had a customer, say, in

the lower part of Vestal on the outside of Binghamton, in that vicinity, and you had another customer that was in Endicott—well, you would have to go either back into Binghamton to go over or go all the way out to Vestal, back over and come back again. In other words, you would have to go around the elbow to get to your thumb.

Q. Now, you used the word "triple cities". I don't think the Trial Examiner is familiar with it. That refers to Binghamton, Endicott, Johnson City, is that right? A. That is right. Now, with the new bridge, it is lots easier to travel, but before it—

Trial Examiner: Mr. Bright, when you speak of outside work, what do you mean exactly? Did you canvass from store to store or house to house, or solicit blindly?

The Witness: Well, if you didn't get enough names—enough customers, come into the store, say, on the day that you were in, maybe you would be in the store and you didn't—being two salesmen, well, it was pretty hard to get enough people who were really interested in buying.

Trial Examiner: Well, how did you know who to see?

The Witness: And ones you got—

Trial Examiner: How did you know who to see when you went outside?

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The Witness: Well, that was it. When a saleswoman would come into the store and you and her knew that your refrigerator was pretty old and you needed a new one and so she came in, maybe she had gone to five other different stores—

Trial Examiner: I see.

The Witness (Continued): —but you would finally get her name the best way you could, and then on your day out, why, you would go to her house and knock on the door and hope and pray that her husband was there so that you would try to convince the two.

Trial Examiner: All right. You answered that question.

Q. (By Mr. Cavers) Now, did you ever talk to Mr. Brancato about a transfer from the appliance department? A. Yes, I did.

Q. And when did you talk to him about a transfer with relation to your going to work for the store? A. Well, it was after I had gone to work, which I didn't relate before. I talked to Mr. DuFour and he said that it was a good chance of working up to becoming a department head.

Q. When did he tell you this, when you went to work there? A. When I went to work, that is one question that I wanted to know and he told me that it was possible that you could work up to be a department head, so Mr. Shoudy had been moved

down to sportswear and that left a vacancy up on the main floor, so I talked with Mr. Brancato about going up into that department, and he told me that he would keep me in mind.

Q. Now, did you ever talk to Mr. Rumble about this transfer? A. Yes.

Q. When did you talk to Mr. Rumble with relation to the conversation that you have just related that you had with Mr. Brancato? A. It was either a day or two after because Mr. Rumble had been out of town, and so when he was back I stopped him on his way up from the basement.

to the main floor and had a talk with him, and he said that he did not know that I had been interested in getting a better position, and that he thought they were sending someone from another store, but if they didn't, why, he would look into my situation.

Q. Now, after this conversation with Mr. Rumble, did you talk to Mr. DuFour? A. Well, let's say that Mr. DuFour talked to me.

Q. Well, all right. What—how long— A. If you mean did I go to Mr. DuFour?

Q. No. Did Mr. DuFour come to you? A. Yes.

Q. How long after the conversation that you just related that you had with Mr. Rumble?

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A. Oh, about a half a minute or less. He came right over to me and asked me if I had got what I wanted or what I was looking for.

Q. What did you say? A. I asked him what he meant, and he says that—"Don't try to kid me, I know what is going on in the store," and I asked him what he meant by that because I wasn't trying to kid him or do anything to him, and he says that he knew that I was looking for a better position. I said, well, he wasn't the only one, there was quite a few of them that knew. Then he said that I couldn't get anything unless he O. K.'d it and I asked him why, and he said that he had to first give the O. K. for me for my release from the department before that I could get in any other department.

Mr. Dickson: If the Examiner please, I move to strike this, it is apparently offered—of course, it is a volunteered answer.

Mr. Cavers: No, I submit this is not a volunteered answer.

Mr. Dickson: All right.

Mr. Cavers: This man is relating a conversation.

Mr. Dickson: If it is responsive, I will move to strike it out on the ground that apparently he is trying to prove this agent's authority over the hiring and transferring of people by what DuFour told him.

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Trial Examiner: Yes, it is rather indirect. I would take it for the more limited purpose of showing the authority Mr. DuFour is said to exercise over the employees in his department. Just on the speculation of the witness or on his opinion, I wouldn't attach much credit to it, to the theory that Mr. DuFour actually did have the absolute right to veto transfers in the department. Was that your point?

Mr. Dickson: That was the point I assume it is being offered for, for that purpose.

Trial Examiner: Well, I didn't take it as going that far, but I would gravely doubt that that would be the situation in an establishment of this kind unless there is direct proof on the point.

Q. (By Mr. Cavers) Now, did Mr. DuFour ever talk to you about the union? A. Yes, he did.

Q. When did he first—strike that: Do you recall the National Labor Relations Board conducted an election at the store on August the 17th, 1954? A. Yes, sir.

Q. When did Mr. DuFour talk to you about the union with relation to the election on August the 17th?

Mr. Dickson: If the Examiner please, before Mr. Cavers goes any further I want to interpose an objection to this

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line of questioning on the ground that it is the position of the Respondent that Mr. DuFour had no

authority to speak for Montgomery Ward & Company, and that therefore anything that he might have said is not only not attributable to the Respondent, but it is prejudicial, there has been no sufficient—

. . .

Mr. Dickson: My objection, of course, is based upon all of the three grounds that is alleged in the amendment to the Answer.

Trial Examiner: Yes, I understand that, Mr. Dickson. I believe on the present state of the record that I am fairly well required to take this testimony. I would decide as of this moment that Mr. DuFour is a supervisor within the meaning of the definition of the Act. I will overrule your objection subject, of course, to your right to renew it. If it appears that I am mistaken, you may renew it.

Mr. Dickson: May I have an objection to the entire line of questioning as to what Mr. DuFour may have purported to say about the union without the necessity of objecting to

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each question?

Trial Examiner: Yes sir, you may.

. . .

Q. (By Mr. Cavers) Mr. Bright, with relation to the election on August the 17th, 1954, when did you first talk to Mr. DuFour, or rather when did Mr. DuFour first talk to you about the union? A. Approximately—

Trial Examiner: Let's put it this way, Mr. Cavers, to start with: Who brought up the subject of the union between you two? Was it you?

The Witness: No sir. It was Mr. DuFour.

Mr. Cavers: All right.

Q. (By Mr. Cavers) When did this conversation take place? A. Approximately two weeks before.

Q. All right. Where were you when you talked to Mr. DuFour? A. In the appliance department.

Q. What did he say to you and what did you say to him? A. Well, he asked me if I had been approached by any of the union members and I told him I had not, and he told me

that not to let them persuade my ideas of thinking, and he told me that the election there was going to be this voting for the union, and that they didn't have a chance of winning, and with curiosity I asked him why, and he told me that the union had to get so many votes, otherwise they wouldn't win, and he told me that they had to get over 75%. So I asked him how—I asked him the question and he started counting off the different people who were not union in the store, and that way the percentage was greater for the store than it was for the union.

Q. What, if anything, else did he say? A. Well, he told me if the union did win that certain individuals in the store would be automatically squeezed out, and if they got to be a closed store entirely, that the company would close the store and Mr. Rumble, Mr. Brancato, himself and Mr. Cook and Mr. George Shadell and then he said other in the store would automatically be taken care of.

Q. Now, you stated that he said that something would happen to certain individuals. A. Yes.

Q. Did he mention any names? A. Yes, he did.

Q. What names did he mention? A. He mentioned Mr. White, a salesman in the tire department

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and Frank Felker—and I can't remember the other names, but at the time that I mentioned—but, he did mention a couple of others. I don't remember the exact names.

Q. At that time, did Mr. DuFour say anything about the company's having knowledge in any way of those who were in favor of the union? A. Yes, he said that he—that the company knew who the head union members were and that they would be taken care of after the election.

Mr. Dickson: Mr. Examiner, I think there is an additional objection to that answer on the ground it represents a hearsay statement, and it is certainly too vague to be of any probative value. I move to strike that.

Trial Examiner: I wouldn't attach much weight to that testimony. I will deny the motion to strike. I will let it stand. I assume that Mr. Cavers will follow it up.

Q. (By Mr. Cavers) You testified that Mr. DuFour said something—mentioned these names of White and Felker; was there any mention made as to—what did he say about White and Felker? A. Well, as I said before that the company would eliminate the jobs, job elimination because here is something—I have tried to remember everything as far as that, but on the other job I had the people—

Q. No. Now, I am just trying to see if you can recall what

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Mr. DuFour said to you.

Trial Examiner: At that time.

Mr. Cavers: At that time.

Q. (By Mr. Cavers) I think you testified— A. Well, what I had asked, I said to DuFour was that if the union

got in, I mean, these—how could they get rid of the people. I mean, the union. The union was strong and they would have to have a very good reason. Well, he said then, that that is when he said about the job elimination that they could put two jobs—two departments together and eliminate that job.

Trial Examiner: Where did this conversation take place, Mr. Bright?

The Witness: On the appliance floor.

Q. (By Mr Cavers) Now, did you ever have to take inventory? A. Yes, sir, I did.

Q. Who told you to take inventory? A. Mr. DuFour.

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Stenographic Transcript of Testimony at Hearing of January 12, 1955.

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PROCEEDINGS

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FRANK J. FELKER a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address, please? A. Frank J. Felker, 25 South Main Street, Montrose, Pennsylvania.

Q. How far is Montrose, Pennsylvania, from Binghamton, Mr. Felker? A. Oh, 23 to 25 miles.

Q. Were you ever employed by Montgomery Ward & Company, Incorporated? A. I was.

Q. When were you first employed? A. June of 1942.

Q. Who was the store manager at that time? A. R. H. Sheppard.

Q. You were employed in the Binghamton store at 38 Main Street?

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A. I was.

Q. In Binghamton? A. In Binghamton.

Q. When you started to work for the company in June of 1942, what was your job at that time? A. Farm equipment department known as 87 Division.

Q. And what was your rate of pay at that time? A. As I remember, it was $35 a week, 4% commission on sales excess of $600 a week.

Q. So you received what they called a base pay of $35 a week and in addition you received commissions on all sales in excess of $600 a week? A. That is right.

Q. And of those sales in excess of $600, you received 4%? A. That is right.

Q. Now, how often did you receive your base pay of $35 a week? How often were you paid? A. Once a week.

Q. And how often were you paid commissions if you earned any? A. Once a month.

Q. How long did you continue to work for the company? A. I believe it is sometime in January, 1953.

Q. And what happened at that time? A. I quit.

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Q. At the time that you quit in January of 1953, what was your base pay at that time? A. $60 a week, basic pay.

Q. And you were still on the same commission basis as when you started? A. I was on the same commission basis.

Q. Who was the manager of the store, do you recall when you quit in January of '53? A. Mr. Orman.

Q. O-R-M-A-N? A. That is right.

Q. Did you ever go back to work for the company again after that? A. I did. I believe it was sometime in March of 1953.

Q. So you were out of the employ of the company approximately two months or thereabouts? A. That is right.

Q. How did it come about that you returned to the employ of the company in the middle of March of 1953? A. I was asked by the company to come back to work.

Q. Who asked you to come back to work? A. Well, it was the series of events that led up to the asking me to come back to work.

Q. Will you relate them please? A. I was first contacted in Montrose, Pennsylvania where

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I was working, old Horlacher & Sherwood's Garage by Mr. White.

Q. Who was Mr. White? A. He was the outside tire salesman. He said I believe there was employment open for you at the store. The rest of the conversation did not pertain—his conversation did not pertain any more to the—to my relation with the company so as to say—then at about the following Sunday a Gladys Witter came over to see if they could get me to come back to work and that was by the request of Mr. Gutmann that she came to see me.

Q. Who is Mr. Gutmann? A. He was assistant store

manager. Following that visit on the following Sunday, Mr. Premmel came to my home.

Q. How do you spell his name, P-R-E-M-M-E-L? A. I think that is right.

Q. And who was he? A. He was the assistant store manager.

Q. Now, where did you see Mr. Premmel? A. He came to my house on a Sunday, his wife and children.

Q. Is that your house in Montrose, Pennsylvania? A. In Montrose, Pennsylvania.

Q. And did you talk to him at that time? A. He said they came over by request of Mr. Schofe to see if they could get me to come back to work.

Q. He said he came over at the request of Mr. Schofe? A. Mr. Schofe was the store manager at that time.

Q. Do you spell his name S-C-H-O-F-E? A. I believe that is right.

Q. What else did Mr. Gutmann say? A. Mr. Gutmann was not in the conversation any—at that time.

Q. Mr. Premmel, rather? A. Mr. Premmel. He said—he asked me if I would come over to the store and talk with the store manager, he couldn't make me any specified offer.

Q. What did you tell Mr. Premmel? A. I agreed to come in and see Mr. Schofe. I told Mr. Premmel I could come in and see Mr. Schofe, which I did.

Q. When did you go in to see Mr. Schofe? A. Oh, the following Thursday at night.

Q. Did you have a conversation where did you see him in the store? A. I saw him in the office.

Q. In the store? A. In the office, in his office.

Q. And did you have a conversation with him at that time? A. I did, I did. I had a conversation.

Q. What did you say to him and what did he say to you? A. Well, there was a little formal talk further first

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personal things and then the question came up of what I was earning, I told him I was earning $65 a week and commission at Horlacher-Sherwood's in Montrose. He wanted to know what I would come back for. I said I would rather leave that open to you. He said, I will bring—I will make you an offer of $70 a week and your same old basic which was $600 sales per week and 4% commission. I agreed to come back.

Q. Did you then come back? A. I did after I gave him my present employer—after I give my present employer one week's notice.

Q. And after your return; then what was your job at that time? A. Farm equipment department known as Division 87.

Q. Is that the same job that you had held previously with the company? A. That is right, the same job.

Q. And then did there come a time after you had returned to work when Mr. Schofe, the manager, was replaced by another manager? A. Approximately 30 days he was replaced by another manager which is now the present store manager, Mr. Rumble.

Q. Now, when you were rehired in March of 1953, were you at that time a member of any labor organization? A. I was not.

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Q. During the course of your employment with the company did you apply for membership in any labor organization? A. I did.

Q. When? A. The forepart of June, 1953.

Q. And what labor organization?

Mr. Dickson: Pardon me, could I get that date, please?

Mr. Cavers: Forepart of June, 1953.

Q. (By Mr. Cavers) In what labor organization did you apply for membership? A. A. F. of L., known as the Retail Clerks International Association, Local Union No. 1687.

Q. You applied for membership in June of what year? A. 1954,—I beg your pardon, it was an error there.

Q. That is this past year? A. That is right.

Q. And how did you apply for membership? A. By signing a card.

* * *

Q. (By Mr. Cavers) Mr. Felker, I show you what has been marked General Counsel's Exhibit 6 for Identification and

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ask you if that is your signature? A. It is.

Q. And did you affix your signature to General Counsel's Exhibit 6 on or about the date indicated thereon? A. That is the correct date.

Q. That is the date which you affixed your signature? A. That is the same.

Q. To the exhibit? A. That is right.

* * *

Q. (By Mr. Cavers) Mr. Felker, where did you get General Counsel's Exhibit 6 before you signed it? A. It was given to me between 9:00 and 9:15 outside the Montgomery Ward's clerks entry door by Mrs. Gladys Witter.

Q. Now, the General Counsel's Exhibit 6 bears the date of June the 3rd, 1954; when did you get the card with relation to that date?

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A. That was the date I got the card.

Q. You got the card on that date? A. That is right.

Q. And after you signed the card, what did you do with it? A. I gave it to Mrs. Hirsch.

Q. Now, after you had signed this card, General Counsel's Exhibit 6, did you ever attend any meetings of the union, Retail Clerks International Association, Local Union 1687? A. Yes, I did.

Q. And when did you attend meetings, do you recall? A. The one meeting in July, July I believe 13th. There was two other meetings I attended in August, August 2nd and August the 10th.

Q. Now, did you ever solicit any of your fellow employees to join the union? A. Well, I talked encouraging to some members of the store outside of the store about joining the union.

Q. Do you recall who you talked to? A. Well, it was Mr. White the outside tire salesman and Mr. Prutisto.

Q. What is the last name? A. Prutisto.

Q. Do you remember his first name? A. Donald, I believe. Mr. Avery, the shipping clerk, John Siedlecki.

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Q. Now, do you recall when you talked to these gentlemen? A. Not as to dates. It was sometime the last of July and part of through August, the first of August.

Q. Did you ever lend any of your fellow employees any money so that they could pay their union dues? A. Yes, on one occasion.

Q. When was that? A. As near as I could remember, I would say it was in the second week of August.

Q. And to whom did you— A. To Mr. McGraw. He stated to me that Mr. Siedlecki before he went on his vacation would like to join the union, but he didn't have the necessary fees. I said I would gladly advance it.

which I did. I gave it to Mr. Graw for Mr. Siedlecki's dues.

Q. Now, do you know—how much did you give him? A. Three dollars.

Q. Do you know Mr. Leonard DuFour? A. I do.

Q. Did you ever talk to Mr. DuFour—did Mr. DuFour ever talk to you about the union? A. Yes.

Q. Then—when did he first talk to you about the union? A. About the latter part of June I'd say, the last week in June.

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Q. In what year would that be? A. 1954.

Q. Where were you when you talked to him at that time? A. In the back of the store near the elevator shaft and at the base of the stairs coming into the basement floor.

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Q. (By Mr. Cavers) Now, you have just testified, Mr. Felker, that the latter part of June, 1954, you had a conversation with Mr. DuFour about the union? What did he say to you and what did you say to him? A. Well, he asked me what I thought of the union. I said I thought it was a good thing because I saw it was the only protection people had that was working in the store.

Q. Was there anything else said at that time? A. No, there was not.

Q. Was there any reason for nothing further?

Mr. Dickson: I object to the argumentative form of the question.

Mr. Cavers: All right. I will withdraw the question.

Q. (By Mr. Cavers) Did you say anything further at that time?

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A. No, I didn't say anything further at that time because just about the time that was replied the assistant store manager came down around the back stairway and cut off the conversation. The conversation wasn't carried on no further.

Q. Well, who was the assistant store manager? A. Mr. Brancato.

Q. Did your talk to Mr. DuFour begin after that about the union? A. Yes, sometime just—awhile before I went on my vacation. I was out on the loading dock.

Q. When did you go on your vacation? A. August 16, 1954.

Q. Well, about how long before that? A. As best as I can remember somewhere around about ten days.

Q. Well, where did you have this conversation with Mr. DuFour? A. I was out on the loading dock.

Q. And what did Mr. DuFour say to you and what did you say to him? A. Well, the conversation was in this line that he said that the company knows all of those that are in favor of the union and they will lose their jobs.

Mr. Dickson: Would you read that answer, Mr. Reporter; please.

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(Answer read.)

Q. (By Mr. Cavers) Was there any thing else said at that time? A. No, not pertaining to the union as I remember it. We were interrupted, people came on the docks, I went along about my business.

Q. After that, did you ever have any other conversa-

tions with Mr. DuFour? A. There was one other, yes sir.

Q. When? A. About the same location when I was coming out of the store, it was noon hour, my lunch hour, it was on a Friday or a Saturday previous to my going on a vacation. At that time he said if the union comes in, we'll all lose our jobs because Montgomery Ward will close the store.

Q. What, if anything, did you say? A. I didn't give him any argument, I moved along about my business.

Q. Now, you have testified that when you returned to the employ of the company in March of '53, that you were the department head in the farm equipment department? A. That is right.

Q. Now, were you ever given any other assignment or were you ever transferred or to put it this way, did you ever work in any other department—

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A. I worked in other departments, not as department head. Not until up to July 1st, 1954.

Q. And what happened at that time? A. I was called to the office by Mr. Rumble by telephone.

Q. Did you go to his office? A. I did.

Q. Did you see Mr. Rumble? A. I did.

Q. Did you talk to him? A. Yes.

Q. What did he say to you and what did you say to him? A. He said, "Frank, due to the low sales in your department, Department 87, it will be necessary for you to take over the toy department." That was known as Division 48. With that, he handed me the inventory book, it is a blue-covered book that has the accounts of the carry-over Christmas stock of 1953. I took that and said, "You know the B and X inventory is coming up. It will be

necessary to take the B and X inventory." That I proceeded to do, I believe, the following Monday or Tuesday.

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Q. After you completed taking the inventory, then did you work in both these departments, that is, the farm equipment department and the toy department? A. I did.

Q. And from that time, did you work in both of those departments from then on up until the time that you were released? A. Yes, the work consisted of setting up a doll counter, that was the major part of the work. I sold toys, all toys, dolls and filled goods in the 48 Division and I also sold what merchandise was to be sold in the farm department known as 87 Division and at the lunch hours I assisted and changed off with Joe McGraw selling paint in the 75 Division.

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Q. Now, did there come a time in 1954, when you went on your vacation? Did you go on your—did you have a vacation last year, 1954? A. I did. I had a vacation in '54.

Q. When did you start on your vacation? A. August the 16th.

Q. Do you recall what day of the week that was? A. Yes, that was on a Monday, August the 16th.

Q. Now, do you recall the National Labor Relations Board election that was held at the store? A. Yes.

Q. That would have been on August the 17th? A. 17th, on a Tuesday.

Q. That was the day following your going on your vacation? A. That is right.

Q. Did you vote in that election? A. I did.

Q. Even though you were on your vacation, you came in to vote? A. I did.

Q. Now, how long a vacation did you have? A. One week.

Q. When did you return to the store from your vacation?

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A. Monday, August the 23rd shortly after 9:00 A. M.

Q. Did you go to work that morning? A. I started to work that morning.

Q. Did you punch your time card in? A. I did not.

Q. Why? A. Because it was not in the rack.

Q. What, if anything, did you do? A. I went to the office. Mr. Brancato was in the office and I said, "There is something wrong, the time card is not in the rack." He said, "No, there is nothing wrong. I have it here." He had the time card in his hand, a receipt book and an envelope with my pay in it.

Q. What, if anything, did he say to you? A. He said, "You will have to sign this receipt and the time card," and he went over to his desk. I did sign the time card and the receipt book. He gave me my pay envelope. He said, "Unless you will have to sign this slip—you will have to sign this slip. This pertains to your unemployment." I also signed that. I didn't—

Q. Well, up to this time, was there any mention made by Mr. Brancato as to whether or not you were going to continue in the employ of the company or— A. Well, I asked him what was up, what was wrong. He said, "I will have to release you."

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Q. And did you then sign these papers that he gave

you to sign, the receipt book and so forth? A. Oh, yes, I did, uh huh. He asked me to.

Q. Now, when you are paid, are you paid by cash or check? A. Paid by cash.

Q. And do they give you the cash in an envelope? A. In an envelope.

Q. When you came up to Mr. Brancato's office that morning did he have the cash already in the envelope? A. He did.

Q. And he had these other papers lying there or in his hand or on his desk and asked you to sign them, is that right? A. That is right.

Q. Was there anything further said at that time? A. I asked him what was the reason for all of this and he said it is by orders of the New York Office, and then he did say at that time, "I can give you a part-time job at $20 a week." I said "Mr. Brancato, you know I can't accept that." Mr. Brancato said, "No, I didn't think you could."

Q. Well now, when in the conversation did he say to you that he could give you a part time job at $20 a week? A. While we were still at the desk, after I had signed all the papers.

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Q. Did he say that before or after he told you you had been released? A. After I had been released.

Q. Did you say anything further than before you left his office to Mr. Brancato? A. Yes, I asked him for my two weeks' dismissal pay.

Q. What, if anything, did he say? A. He said he couldn't give it to me. He did not have the authority.

Q. Did you ever return to the store after that? A. On several occasions.

Q. Did you ever--did you talk to Mr. Rumble the day you were discharged? A. Oh, no, no, I didn't see Mr. Rumble that day.

Q. Did you ever see Mr. Rumble after that? A. Yes.

Q. When? How long after? A. Oh, it could be ten days, approximately ten days.

Q. And where did you see him at that time? A. Stock-room.

Q. In the store? A. That is right.

Q. Did you talk to Mr. Rumble on that occasion? A. Yes, I was talking to Mildred Knapp and Mr. Avery, the shipping clerk. Mr. Rumble came up, came near me and

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I asked him about my dismissal pay. He says, "I can't give it to you." He said, "Frank, I hope you don't hold anything against me. As far as I am concerned, there was nothing wrong with your work," and with that he left.

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Q. Now, did you ever hear of the Ward's Sales Leadership Club? A. Yes.

Q. What is that? A. It is known—it is headed—first when I won I received—it was headed as the "winners" it is the Ward's—it is the Ward's Sales Leadership Club for—that—the one I am referring to is the one that was published in 1943.

Q. When did you first make the Ward's Leadership Club? A. 1943.

Q. And as a result of making it, was your name included within this magazine called the Winners? A. It was, with a photograph inside.

Mr. Dickson: If the Examiner please, I think these occurrences eleven years before the dismissal are too remote to have any probative value, and I will object to them.

Mr. Cavers: Well now, I am going to follow this up a little bit and bring it a little closer up to date.

Trial Examiner: I will permit Mr. Dickson. That was first in 1943, I believe you said.

Mr. Cavers: Will you mark as General Counsel's Exhibit 7, Mr. Reporter, a booklet entitled "The Winners".

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 7 for Identification.)

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Trial Examiner: I understood you to say, Mr. Felker, that you started work in June of 1942?

The Witness: That is right.

Trial Examiner: At the Binghamton store?

The Witness: That is right.

Q. (By Mr. Cavers) Mr. Felker, I show you what has been marked as General Counsel's Exhibit 7 and I show you the eighth page containing pictures of individuals, and ask you if that is a picture of yourself inscribed underneath with the words "Frank Felker, Binghamton, New York." A. That is right.

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Q. (By Mr. Cavers) I believe you have testified that you made what is known as the Ward's Leadership Club in 1943. Did you ever make it again after that? A. 1945.

Q. And for what months in '45, do you recall? A. April, May and June.

Q. And was your name again included in the magazine, we'll call it or the pamphlet called "The Winners"? A. They discontinued it at that time. They come out with that yellow sheet which you hold in your hand and where it is mentioned and named in that—

* * *

Q. (By Mr. Cavers) I show you what has been marked

as General Counsel's Exhibit 8, Mr. Felker, and ask you if—referring to page 7 if your name is listed under those—under the hardware and farm equipment divisions, 83, 84 and 87?

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A. Yes, my name is there, followed by a figure two.

Q. Followed by a figure two in parenthesis. Do you know what that figure two in parenthesis is? A. It means that I am entitled to wear a number two of the Ward's Club, of which I am now wearing.

Q. It means that you made it for the second time? A. Made it for the second time.

* * *

Q. (By Mr. Cayers) Now, being the highest in sales in these two periods that I have referred to or that we have referred to within what area, geographical area were you the highest? A. I believe it is known as Region No. 1.

Q. And that is the region—did you hear the testimony of

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Mr. Rumble yesterday? A. Yes, I believe I did.

Q. And that is the region that he described as the New York region which includes Binghamton and so forth? A. That is right.

Q. Now, in 1945, when you made the Ward's Leadership Club in addition to having your name included within the the magazine "The Winners", did you receive any additional prize for anything else at that time? A. Yes, it was a trip to New York—or to Chicago, expenses all paid.

Q. Now, in the store, Binghamton store, you sell at retail, is that correct? A. That is right.

Q. In other words, the customer comes in the store and you make a sale direct to the customer? A. That is right.

Q. Do you also have catalog sales? A. I do.

Q. Does the company require you to sell from the catalog as well as from off the floor, so to speak? A. Yes, because Mr. Rumble brought the question up, it is mandatory that you had to sell out of the catalog because he made the statement in one of our meetings there would be grounds to fire a clerk if they are not able to sell

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catalog sales.

Q. Now, in 1954, do you know how you stood in catalog sales in the store? A. I was high.

Q. During what period of time? A. May, June and July.

Q. Now, when you say you were high—

Mr. Dickson: Pardon me, what period was that?

Mr. Cavers: May, June and July.

Mr. Dickson: Of what year?

Mr. Cavers: '54.

* * *

Q. (By Mr. Cavers) How do you know that you were high? A. There is a chart carried every day, day by day at the mail order desk. Each sale is tabulated, and a sale to any customer means one, whether it is a ten cent sale or a sixty

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dollar sale. Each one counts for a sale providing that sale has gone completely through and the customer has received the merchandise.

* * *

Q. (By Mr. Cavers) Now, where did you see that chart? A. It is posted in the mail order department.

Q. Where is the mail order department? A. In the basement, just back of Division 87. As a matter of fact, they took part of my Division 87 over and planted mail order in that department of mine.

Q. Now, who prepares the chart, do you know? A. It is prepared by the lady or gentleman whoever is in charge of the mail order department.

Q. And is it posted all the time? A. It is supposed to be, when it is up to date it is posted all the time. It is in—right out in view, we were all kind of interested in it because we were forced to sell mail order sales, so we kept check of ourselves to know how they stood in it.

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Q. (By Mr. Cavers) Now, has it been the custom—how long has this chart been posted? A. I can remember back four years at least.

Q. In other words, during these four years, there has always been a chart showing the catalogue sales posted? A. Yes, sir.

Q. And does the chart change from time to time? A. Well, it changed from time to time in positions how the sales people of the store stood in amount of sales.

Q. Well, how often has the chart been changed, one chart taken down and a new one put up? A. My best recollection it is put up new every 30 days.

Q. Now, when you testified that you were high in catalog sales, you were testifying now as to what that chart showed, is that right? A. That is right, I have to take those figures.

Q. And what do you mean when you say that you are high—the chart showed that you were high in the catalog sales; does that mean in amounts or in number of sales? A. In number of sales as carried out across the chart. These figures are carried out in blocks and they are blocked

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off as you go along—advance according to your sales across the sheet.

Q. (By Mr. Cavers) Now, in the farm equipment division you sell tractor equipment? A. I do.

Q. Were you ever high in the sales of tractor equipment in this district? A. Yes.

Q. (By Mr. Cavers) What was your answer?

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A. I was high.

Q. When? A. In spring of 1953.

Q. Now, how do you know you were high? A. I was high because the district superintendent, Mr. Levengood said I had won and he gave me ten dollars for my prize money.

Q. Gave you ten dollars for your prize money? A. He said, "Buy yourself a hat with it."

Q. Do you recall when this occurred? A. Well, I—it was in late spring or early summer, I wouldn't know the exact date. It is when he made a visit to the store.

Q. Of 19— A. 1953.

Q. Now, what was the ten dollars that he gave you for? A. For being high salesman in the department of selling garden tractors and accessories.

Q. In 1953, Mr. Felker, did your sell baby chickens in your farm equipment department? A. There was one order of chickens came in for display which was sold immediately off the floor by request of Mr. Rumible. The only way I could sell chickens in 1953 was customer order and shipped direct, that is entirely different than the set-up that I used to work under.

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Q. Now, I am just speaking of 1953, you say you did get some in 1953? A. One shipment for display.

Q. Well, how many chickens were there in that one shipment? A. 25.

Q. And you sold those? A. They were sold immediately out of the store by request of Mr. Rumble.

Q. And what was the other type of sale that you referred to? A. The type of sale, a customer order.

Q. Customer order? A. Customer order shipped direct.

Q. Would you tell the Examiner what that customer order is? A. A customer order is a type of sale in this respect, the customer comes in, tells me the amount of chickens he wants, whether it is a hundred or a thousand. We demand a down payment of 25% at that time. He pays the 25% if they were bought in the store. If they were shipped direct to pay in full or put it on his account and then they were shipped to him by mail.

Q. Can you recall how your sales of baby chicks by customer order was in 1953? A. It was considerable less than it was the previous years.

Q. It was less in '53?

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A. That is right.

Q. Now, in 1953, did you sell poultry equipment? A. Yes, sir.

Q. Do you recall how the sale of poultry equipment was in 1953? A. Very much less in volume, dollar-wise.

Q. And was than it was in '52? A. Than it was in '52.

Q. In 1954; that is, this last year? A. The same. It was the same trend downward.

Q. Well, did you still sell baby chicks on custom order in '54? A. I did.

Q. In '53 now, did you stock poultry equipment? In other words, carry the actual poultry equipment on the floor in your department? A. Yes, sir.

Q. In '54, this last year, did you carry the poultry equipment merchandise in the store? A. Yes, and much more limited in quantities.

Trial Examiner: Mr. Felker, prior to 1953, did you customarily sell baby chicks from the floor, that is, did you have them in your department at all times?

The Witness: I had a display in the department and they were stocked outside in brooders in a house.

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Trial Examiner: Well, that is really what I mean, the 25 chicks you had in the department for display purposes only?

The Witness: That is right, just display.

Trial Examiner: So people would know you had them?

The Witness: That is right, uh huh.

Q. (By Mr. Cavers) Now, I believe you testified that you had heard the testimony of Mr. Rumble yesterday? A. I did.

Q. Mr. Rumble testified that you didn't in substance that your merchandising was not good and that you didn't keep your—maintain a sufficient stock of merchandise for sale in your department? A. That is right.

Q. Now, 1954, did you have a good stock or as good—as good a stock of merchandise for sale as in the previous year, '52—'53? A. No, I did not.

Q. Why didn't you carry as much stock? A. I wasn't permitted to.

Q. What do you mean that you weren't permitted to? A. My—my open to buy, the amount of money I was allowed to spend was overbought through the months of April, May, June and July.

Q. Were you given as much money to buy with in 1954 as

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you were in '53? A. I don't have the figures so I can compare that. But—but it was the cutback on open to buy that affected me to place orders that I couldn't get merchandise.

Q. Now, did you always receive all of the merchandise that you requisitioned for, let's put it that way? A. Yes, if the orders were passed by the store supervision or passed by the buying office in New York.

Q. When you decide that you need some merchandise in your department, how do you requisition for it, or how do you get it? What is the first step that you take? A. First I make a count of the department from the basic book, the needs are shown. I turn that in to the stock records girl in the stock records office. She in turn writes the orders.

Q. All right. Now, when you turn this—in 1954 when you turn the requisitions, let's call them, into the stock records girl, did you always get everything you requisitioned for? A. No.

Q. Do you know why you didn't get it? A. Yes, sir.

Q. Why? A. Because the orders were not passed.

Q. In other words, when you requisitioned for merchandise,

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the merchandise never eventually came back to you at all:

some place along the line it was deleted, is that right? A. You may use the word "deleted". It was never put through.

Q. You never got it, in other words? A. In other words, I never got it, that is right.

Q. Now, during 1954, at any time, did Mr. Rumble ever criticize you because you weren't well stocked on merchandise? A. No, because of that—if that had been the case, I would have told him why I couldn't have stocked my counters.

Q. During 1954 at any time? A. Not at any time to my knowledge, no, no, sir.

Q. Did Mr. Rumble ever criticize you because your department wasn't clean or orderly? A. No, sir. The only time that he ever came down was we were having company coming down on the tractor floor and he wanted me to shine up the tractors a bit, which I did. I took paint and painted up the rubber tires, and where the marks were on the floor I touched up the best I could. I didn't have much paint to do it with.

Q. When was this? A. Well, I wouldn't know exactly, it was when Mr. Rumble was expecting official company, usually when most of the rushes are put on.

Q. Other than that occasion, did he ever criticize you

because your department was— A. Not to my face. Mr. Rumble didn't visit my department very often.

Q. Did Mr. Brancato ever criticize you? A. No, sir.

Q. Because your department wasn't clean or orderly? A. No, sir.

Q. Were you ever asked to work overtime? A. Yes, I was.

Q. Were you asked to work overtime in '54? A. Yes, sir.

Q. Did you ever work overtime in 1954? A. On many occasions.

Q. Did you ever tell Mr. Rumble that you wouldn't work overtime? A. No, sir.

Q. Did you ever discuss working overtime with Mr. Brancato? A. Yes, sir.

Q. On how many occasions? A. Once.

Q. Do you recall when? A. I wouldn't know the time. It was along in the latter—forepart—the latter part of an afternoon.

Q. Well, can you tell us with relation to the last day you worked for the company when you discussed with Mr. Brancato

working overtime? A. It would be sometime I'd say late spring, the question was brought up about working.

Q. Late spring of what year? A. '54.

Q. Now, can you be a little more specific with respect to what you mean by "late spring"? A. I would say sometime late in June the question was brought up about working. At that time—and they wanted us to come back at 7:00, work until 9:00, two hours.

Q. What time does the store close? A. 5:00 o'clock. I objected to it because I had to stay over for my lunch hour. I have to buy a meal. I am too far away. I said you know that according to our basic book of employment, if I can't get back in time the company is supposed to buy the dinner ticket. After that, then there was a meeting and at that meeting—

Q. Now, I want to stop you there A. O. K.

Q. Who did you tell this to? A. Mr. Brancato on the back steps coming into the basement.

Q. All right. Will you continue. A. In a meeting men was kept over and a vote was taken as to how we would put in our extra hours above the 40-hour

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week that the store is open. We were required to work four extra hours, 44 hours for our basic pay. It was voted and it was voted that we continue to work straight through until 6:00 o'clock and go home instead of working until 5:00, closing the store and coming back and working 7:00 to 9:00.

Q. Thereafter, after you are talking with Mr. Brancato about working this overtime, did you ever work overtime after that? A. I believe not.

Q. Well, did you ever work from 5:00 to 7:00? A. Yes. I did, required once a week—once each week. Once each week, we were required to do that.

Q. After your discussion with Mr. Brancato about the time of working overtime, did you ever refuse to work overtime? A. I never refused to work overtime.

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Q. (By Mr. Cavers) Mr. Felker, did at any time during 1952, Mr. Rumble ever criticize you because the display in your department was poor? A. Never called it to my attention and took me aside and talked to me any way about it.

Q. Did Mr. Brancato ever criticize you? A. No, sir.

Q. In 1954, at any time, did Mr. Rumble ever come down there and—in your department and install any sort of a display? A. If he did, it was very limited while I was there—it wouldn't be over a 15-minute period if he did.

Q. Do you recall any? A. I don't recall any such action or work on his part.

Q. Mr. Brancato ever come down and install— A. Mr. Brancato worked in the department and helped me on

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one occasion, glassing in a counter, and the reason for that at that time was because we were in a hurry for it, not because I couldn't do it, was because I was in a hurry.

Q. What sort of a display or glassing in, what sort of a counter? A. It was known as the dairy display counter.

Q. And when did this occur? A. I wouldn't have an answer to it because it is too vague. I do know he helped me, but I couldn't tell you as to the time. It would be to my best knowledge shortly after the Christmas toys was moved out in 19—in December of 1953 or the first week in January, 1954. That is when we relaid and bring back in farm equipment after the toys are moved out.

Q. During 1954, did—did you know whether or not the company employed a display man? A. I would say no, no display man. There was a man they used part-time for window dressing, that was '54.

Q. In '54. From January, let's say, of '54 to August of '54 when you were released? A. I would say no.

Q. Well, do you recall a part-time display man or a man who— A. They had a man they brought in for part time work on part-time, did extra work around.

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Q. Do you recall that man's name? A. I do not.

Q. During 1954, from January until the time you were released, did that man ever come in your department and set up any displays? A. The only thing that any outside man came and helped me on the display was when the counters were moved over to the right about eight inches.

Q. Can you move a counter alone? A. Oh, no, it takes several men to move some of the counters.

Q. And they came in to help you move the counter? A. That is right.

Q. During 1954, did you have riders with you that rode with you to and from work? A. People rode with me. They were not steady riders, people rode with me.

Q. What do you mean when you say "people rode with you"? A. Well, for instance, Mrs. Scott, the lady in time payment lived up on Conklin Road, the other lady in the department would call me on the phone and want a ride home with me after store hours, so she came out to the parking lot and waited—I waited for them to take them up to Conklin, six or eight miles, leave them out on my way home.

Q. And did Mrs. Scott and how many others besides

Mrs. Scott? A. Well, I can't give the name of the lady. I don't remember her name, but she lived up in the neighborhood of Mrs. Scott. People did ride in with me and ride back, but no particular person riding steady. In other words, they would call me for a ride home, elderly people, and I would take them back home at night after work. They would spend the day in the city.

Q. Well, these riders, did you have any regular riders who rode in with you every day? A. No, sir.

Q. Did you have any regular riders who rode home with you every day? A. No, not regularly. They had called me—they would call me from day to day when they would want a ride with me.

Trial Examiner: What Mr. Cavers really wants to know is whether you were a member of a group, whether you were organized into what is usually called a car pool where one person drives one day and carries the owner of the other cars so that you

drive your own car every third or fourth or fifth day?

The Witness: There was such a thing, but not in the category at the time he was speaking. It came out at the time when gasoline was rationed and it kept coming down, wouldn't allow these other people in my town, they had taken

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other employment, and as of the time you are requiring and covering this particular period—date—it was just as I called them extra riders, they were not permanent riders.

Q. (By Mr. Cavers) Well, during the period from the time Mr. Rumble came to the store, I believe shortly after you were rehired in 1953, until January, 1954, did you have any regular riders that rode in and out with you every day? A. Yes, there was one that rode about—a young lady rode about three months with me in, and on occasions when I had to work nights she had to find another way home.

Q. What three months in 1953? A. April, May and June.

Q. And did she work at Ward's store? A. Oh, no.

Q. During 19—that portion of 1953, were you a member of any car pool? A. I was not.

Q. Now, you testified that you went on your vacation, started your vacation August the 16th, 1954, is that right? A. That is right.

Q. When was your last—when did you receive your last pay prior to going on your vacation? You started on your vacation— A. On a Thursday.

Q. Would that be the prior Thursday?

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A. Prior—prior to going on my vacation.

Q. And when you were paid on that Thursday, how far were you then paid up, to the prior Wednesday night? A. The prior Wednesday night, that is pay-day.

Q. So when you went on your vacation you had three days' pay coming? A. Three days.

Q. Which would be Thursday, Friday and Saturday? A. That is right.

Q. And is that the pay that you refer to—that Mr. Brancato gave you on the 23rd? A. On the 23rd, that is right.

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CROSS EXAMINATION:

Q. (By Mr. Dickson) * * *

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Q. Did you have charge of ordering merchandise for

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Division 87? A. Not the actual ordering, showing the needs by checking and counting.

Q. All right. Will you tell us just what you did in order to show those needs? A. I have what is known as a basic book. The basic book is broken down in four sections, a section each week is counted, meaning the merchandise under that particular folder.

Q. Go ahead. A. (Cont'd) —The counting of that particular section might include merchandise on the floor in the stockroom, out back of the store and in the warehouse, which is two and a half miles away.

Q. Go ahead. A. (Cont'd) —then the book is returned to what is known as stock records, from there on the orders is handled by other than my ownself.

Q. Did you put any indication in the book of what merchandise you wanted? A. Oh, yes, that is, you show—

Q. How did you do that? A. By pencil.

Q. Did you list item numbers or anything of that kind? A. Item numbers are listed for each item—each item

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carries a number.

Q. Well now, as a matter of fact, there is a separate sheet, isn't there, for each item number? A. That is right.

Q. And if you thought you needed any of that item number you would list it on that sheet, isn't that right? A. Not quite—not if—not in all cases is it right. There is several items listed on that sheet.

Q. Several items, is that right? A. That is right.

Q. Well, then you would have to specify which one you want? A. That is right.

Q. Is it any part of the duties of a department head as you have picked it up from time to time to keep his inventory fresh or current? A. It is kept current because you check a book each week.

Q. Well, what I mean by that is to avoid if possible having old merchandise that has been in the stock for a long time. A. Old merchandise doesn't come from checking.

Q. No, I don't suppose it does. I am going to a little different subject now. Is there any duty that anybody told you or did you pick it up from what you heard, that it was a desirable thing not to have merchandise that had been

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there for six months or a year or more than a year? A. Always the aim of a department head to not have merchandise over six months.

Q. So, he has got that—he has some obligation in that respect to try to get rid of that, doesn't he? A. Oh, yes.

Q. What do you do in order to avoid having that old merchandise? A. If possible, display it. I have been very limited in display, that is one of the things that has led to overstock of old merchandise.

Q. No, you didn't have enough room to display? A. That is absolutely right.

Q. Did you complain to anybody about that? A. It wouldn't be necessary to complain about it.

Q. Why not? A. Because I have two supervisors that can see it as well as I. They didn't provide the room for me.

Q. Well, if you are a department head, you would know a little more about what you needed than the supervisor who had to supervise many other departments. A. I might have, but they don't operate that way.

Q. How do they operate? A. They operate that they know and the department head doesn't know as much.

Q. So you weren't really supposed to know very much except take orders, is that right? A. Well, I wasn't—I wasn't allowed to exercise it too much. I knew—

Q. So would it be your answer that you did have some old merchandise but the reason you had it was because you couldn't get rid of it, you couldn't display it properly? A. That would be part of the reason.

Q. Well, what is the other reason, if any, or other reasons? A. Other reason is improper handling in the stockroom and the warehouse.

Q. All right. Tell us how the stockroom and warehouse was improperly handled? A. Merchandise being received in the stockrooms when put back in the bins to make ideal working condition, the old merchandise that was already there should be put in—should be put forward and the new

put in back, and when it is called for from the stockroom by the stock clerk, she should bring that down first and many instances that doesn't happen.

Q. Was that a contributing factor in your having difficulty in getting rid of old merchandise in Division 87? A. No, that isn't only—there is others.

Q. Go ahead. A. I received old merchandise with old tickets on, we are

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not allowed to change ticket numbers and receiving dates.

Mr. Dickson: Would you read me that answer, Mr. Reporter.

(Answer read.)

Q. (By Mr. Dickson) Well, what would that have to do with selling whether it had old tickets on? A. If that wasn't received in rotation on the floor or if it showed merchandise kept in another store, receiving date is six months or a year old when it comes into my store that ticket would still show that date.

Q. Oh, I see. You mean it had a ticket showing the date of receipt which was not the date of receipt in your store? A. That is right, that has happened.

Q. Was that a very frequent occurrence? A. In the past, it was quite frequent.

Q. Well, what period of time are you speaking of now? A. Well, since I have been in th store, I have liquidated the overstock list at three different stores, they have been sent in—from 87 at my store—at the present date if you want a specific thing there was a pasteurizer received in the store after I came back to employment the second time at Montgomery Ward's that was shipped from another store that showed a date that was a year and a half old.

Q. How did you liquidate that old merchandise, Mr. Felker? A. How could I liquidate it?

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Q. How did you. You say you did liquidate it, I believe three different times, how was that done? A. By sales.

Q. Well, you mean reducing the price? A. Not—some of it would be reduced, not all of it.

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Q. Did Mr. Orman ever criticize you while you were there on the ground that he didn't think you kept your department up or kept it clean? A. The only criticism Mr. Orman ever had with me personally about my work was on my B and X report. It was terrific at the time, I was liquidating large store stocks from other stores.

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Q. (By Mr. Dickson) Mr. Felker, the farm equipment which is Division 87 is a seasonal kind of business, isn't it? You sell more in one part of the year than in another? A. Yes.

Q. When is the peak period for that? A. Of the present stocking—stock—the books set up on

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seasonal—is in the spring. The better season is in the spring.

Q. The better season is in the spring. And that was true during the last year or so? A. During the last year or so because of the way the checking was set up.

Q. Now, explain that. Has there been some change? A. Well, decidedly so.

Q. What was that? A. Previous to the last three

years I was buying quite a lot of heavy equipment, snowplows, attachable snowplows for big tractors, trailers.

Q. Well now, of course, I can understand that people who buy snow plows in the fall, would they buy big tractors or trailers at that time? A. Don't get me wrong on the tractors. I didn't sell big tractors, but attachments that fit big tractors. I bought them by the carload.

Q. And would those sell in the fall as well as the spring? A. All during the winter when the snow is on the ground.

Q. But, during about the last three years, if I understand you rightly, they cut out some of those heavy lines. A. The New York Office cut it out of the basic book. The pages still show in the basic book as they did last year. It says customer orders do not check.

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Q. You were selling generally speaking lighter equipment? A. Lighter equipment.

Q. And that the heavy sale on that was in the spring? A. That is right.

Q. Now, when would it reach its peak? A. Well, that would be a hard question to answer that particular way.

Q. Well, approximately, I mean, early spring? A. April, May, June and July are their big months.

Q. And then it fell off rather rapidly, didn't it? A. It depended a little bit on the weather and so on, yes, I would say so.

Q. As a matter of fact, weren't your sales in the fall only a small fraction of what they were in the spring? A. It had to be the way I was allowed to buy and check, not because—

Q. Well, I mean whatever the reason may be. A. It wasn't because they—we lacked the customers, it was be-

cause we didn't have the merchandise to sell the customer when they called.

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Q. Now, was it the practice, let's take, 1953, when you were there in the fall—did you contract division 87 installation and replace it to some extent with toys? A. We was—in round figures we was replacing 99%.

Q. 99%. A. Because—

Q. You didn't have much left. A. I had nothing much left.

Q. In your division by Christmastime? A. That's right.

Q. And did that involve physical changes in the store? What had to be done? A. Oh, physical changes, counters had to be relaid, my merchandise, I had to pack and send to the warehouse, counters had to be rebuilt.

Q. Counters had to be rebuilt because the Division 87 counters weren't suitable for toys, is that right? A. That is right. That is where I started to get my heavy B and X report because my merchandise was being moved off of display, the only chance I had to sell was when a customer requests, then I would have to get the warehouse and stockhouse and so on. It was messed up, and it was very

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hard to check our B and X reports on your counters, and mark downs.

Q. I could see that would be the case. Of course, that was a thing that happened every year? A. That was very confusing.

Q. So you knew it was going to come. Now, so in the fall of '53 to take a specific case, when would you begin

liquidating the display, Division 87, and putting in the display of Division 48? A. Well, as I remember it in the fall of '53, we were a month, possibly two months later taking down the counters than we were in '54.

Q. Oh, was that so. When did you actually take them down in '53? A. In '53?

Q. Yes. A. In '53 we started in sometime in September.

Q. And that would be a month or two months later than normal, would it? A. That is right.

Q. So that would bring us, I think you said in September— A. That is right, about September. Sometime in September in '53.

Q. So it would be July or August, is that right? Normally you would begin to relay in July or August?

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A. You mean toys?

Q. Yes. A. Oh, no, no.

Q. Well, let me understand you. You said that in the fall of '53 when did you do the re-laying? A For the toys?

Q. For the toys? A. As soon as a toy counter come in, as soon as we were ready to bring in a toy counter, I would take the farm equipment off and re-lay the counters to put 48 Division merchandise on that particular counter. There was only one counter used at a time getting down. It was progressive.

Q. What, one at a time? A. That is right, it was progressive.

Q. When did you start to do that in the fall of— A. As I remember, it was in September.

Q. And was that late? A. No, that wasn't considered late. It wasn't as late as compared to other years. Each

year we were creeping up and getting a li ... earlier with it.

Q. Before you left the company in August of '54 had that change begun? A. Oh, yes.

Q. It had? A. Uh huh.

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Q. How much—how many counters had been relaid at that time? A. We relaid—we added to the wheel goods counter and we put up a doll counter.

Q. About two counters. I mean, I am not trying to pin you down, but approximately. A. Well, the doll counter consisted of one counter, and an end counter, about five foot, about a five foot counter.

Q. So that as the Division 87 display was contracted toys moved in to take its place, that is the substance of it, isn't it? A. That is right.

Q. Now, does your division 48 sales pick up right away as soon as the counters are laid out or is there some lag there, would you say? A. Well, there is two factors, there is two factors enter into that. First your display is growing, it is like, we'll speak of the month of July, it is very light. One counter, for instance, and the whole display of wheel goods which would sell fairly slow, but it is growing. Next figure in as far as sales is concerned, and so on toys is a much smaller item, a lower ticketed sale item than most of my items in farm equipment, 87.

Q. Oh, surely. A. The volume of sales is less.

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Q. Sure. Would that be true though during the heighth of the season, the Christmas season? A. The heighth of the Christmas season I could sell—I sold in 48 while I was with the company after it was installed down there, was moved from the other end of the store down—about five

years ago—so then I incorporated in it—I sold each year, sold in the other department.

Q. I understand. As your Division 87 was contracted and put away, you moved into 48? A. That is right.

Q. And by the heighth of the Christmas season couldn't you sell about as much in 48 as you did in 87? A. The only month I would make personal production was during the Christmas season of December.

Q. Of December? A. That is right.

Q. So that there would be a slack period in there, if I understand you, from the time, say, the end of July or so when your Division 87 had contracted up until your Division 48 got really going, isn't that right? A. That holds true in mostly 1953 and '54.

Q. Because of that— A. Because of this—

Q. (Cont'd) —new situation? A. (Cont'd) —new situation, checking the merchandise,

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allowing to have merchandise.

Q. Your Division 87 was next to the catalog order desk, was it? A. Catalog mail order—mail order or catalog desk took over part of my section, that is one of the things that happened to 87.

Q. When did that happen? A. '53.

Q. Was your space reduced then? A. It was reduced quite a lot.

Q. Now— A. Could I add some more to that?

Q. Go right ahead. A. That took out the entire display of wire fencing, fence posts and fence materials which s shovels, that is the hand shovel and, I believe, that roughly covers it.

Q. And you didn't display those items any more after that? A. They were not displayed in the store.

Q. They were displayed outside in the back lot? A. Back lot.

Q. Back lot? A. That is right. Quite a distance from the store.

Q. You did have a lot? A. I had a reduced lot from what I used to have. It was very much reduced. That was shared with other departments.

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Q. Yes. A. With that—

Q. And how you displayed your heavy items like fencing out there— A. Fences, trailers and wagons and fence posts.

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Q. You mentioned that on direct examination that you didn't have as good a stock in '54 as you did in '53 because you were cut back in your open to buy. Now, will you tell the Examiner what you mean by "open to buy"? A. Each—the first of each—of every month, the New York office sends in your standing, your figures, it depends on the store manager sending in his potential sales. It started with the store manager, he builds it up, it comes back from New York and it shows you how much money you are going to have to spend over and above the stock you have on hand.

Q. Do you know how they determine that? A. I do not.

Q. That is—that has some relation to what you have on hand, doesn't it? A. Oh, yes.

Q. And some relation to the sales they expect you to make? A. Yes, but you see, I am not consulted in the sales, I am not consulted in the sales I expect to make, therefore—

Q. I understand that. They make the figures up in the New York office? A. They make them out themselves, that is right.

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Q. And it is their judgment or their guess as to your sales that controls, isn't that right? A. And they control the amount of business that way, that is up and down.

Q. Well now, would your open to buy there in 1953 be affected by the amount of B and X inventory you have? Would that have a bearing on it? A. It would in this respect: It has been running on and the customers coming in and asking for seasonal merchandise you want—saying, no, you don't have it, they get so they don't come back to your store, therefore, it doesn't give you a chance to liquidate old merchandise. It does work bad.

Q. And if you have an inventory the New York Office I suppose would look at it by dollar amount and if a lot of it was stuff you couldn't move, why, they wouldn't let you buy new merchandise, isn't that right? A. That is right, and I would have a few visits. I would only—I had only one visit from the merchandiser in the last year. I had other merchandisers that made monthly calls, and they would assist me in getting that—and keep a balanced stock.

Q. Now, you mentioned, you said that Mr. Rumble didn't criticize you for not being well stocked or for your department not being clean. Did Mr. Gutmann ever criticize you

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for those things? A. No. Mr. Gutmann did not. Did you know—as a matter of fact, the impression here being brought out is that it must be dirt shoveled on my counters,

and they must be very dirty. I wonder what is meant by dirty counters, that I can't figure out.

Q. Well, you say they were clean as far as you were concerned? A. They were clean as far as—if they might not have met his inspection, they didn't meet it, he should have mentioned it to—

Q. You meant to say that nobody in management criticized— A. Not only to my face or to me outside and talk to me, say, why don't you get this clean, this counter. That never occurred.

Q. That didn't happen? A. It did not.

Q. And how often, your stock, did they criticize, your inventory or whether you were well stocked? A. No, I wasn't having anything to do about that because I will tell you why, I would think that 65 or 75 per cent of it was due to their part of the story instead of my management, they controlled the amount of stock that I had. They didn't pass my orders after I sent them up, sent them up once and the orders were thrown away.

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Q. They wouldn't let you— A. That is right.

Q. You say 65 to 75 per cent? A. I didn't say orders, the amount of stock that I would have.

Q. Well now, I am not sure I understand your answer. Explain it to us a little. A. An order might consist of a lot of items, an order—but, if one order wasn't passed, then I wouldn't have the items to replace my stock.

Q. Oh, sure, if you had an order with ten items and another order with one, the first one was turned down, you would be ten items worse off than in the second one, that is what you mean? A. That is right.

Q. And taking it by number of items rather than by number of orders would you say they turned down as much

as 65 to 70 per cent of your orders, your number of items ordered? A. In the month of April, May and June and July, it would almost be that because there was no orders passed only customer orders and very few orders on supplementary which is non—which is known as a supplementary amount of money to spend, very few orders were passed.

Q. What do you mean by the supplementary amount of money? A. I think Mr. Rumble can explain. I can't, it is a setup

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from the office upstairs. It is money I can use.

Q. Did they give you any explanation, any of the management people, as to why your orders were being stopped? A. It wasn't brought up to me. I never would have known it if I hadn't approached the girl on the floor and asked where the orders—why the orders weren't in the order file.

Q. Whom did you talk to? A. The young lady that writes the orders, she was on the floor.

Q. What was her name, do you recall? A. I believe the name was Parcell.

Q. Wouldn't that be Miss Brewer? A. Parcell is the one that wrote the orders.

Q. Parcell. And you asked her what was happening to your orders, did you? A. That is right. I said they are not in the open order file. She said they are not passed. They are throwed aside.

Q. Did she tell you why? A. No, I don't think that—I know the reason why because I had no open to buy.

And that was the figure, the open to buy was the figure set by the New York office, wasn't it? I mean, they figure it on your projected sales? A. I don't have anything to do with that.

Q. Do you know whether Mr. Rumble and his assistant had

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anything to do with it or was it the New York office? A. Mr. Rumble can answer it because it is standard procedure, I couldn't answer.

Q. You don't know one way or the other? A. I do not. I don't want to be responsible for—

Q. You aren't sure whether it is the store manager or the region? A. That is right, I think it is determined on the anticipated sales

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Q. Coming back to your riding back and forth from home

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you mentioned one regular rider that you had early in 1953. Did you have any other people who rode with you regularly during '53 or '54? A. Not regularly. They would call and want to come in and want to shop during the day and come back at night in the regular—

Q. That would be just an occasion? A. Just an—an occasion, it practically kept my car full most of the time. I really was a pretty good customer for the triple cities.

Q. You were running a pretty good taxi even though it was free? A. Yes, sir.

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Q. Now, from time to time you have seen Mr. Rumble, haven't you, since you left? A. Oh, yes.

Q. Can you tell me about how many times? A. Well,

I wouldn't know how many times, but I have been in the store at least once a week, at least once a week.

Q. And quite frequently in those visits you have seen Mr. Rumble, is that right, or Mr. Brancato? A. On occasions more than half the time I have met either one of them, either one.

Q. And you have spoken to them on these occasions? A. Always, yes sir.

Q. And your relations are still not too unfriendly, are they? A. I hope they are friendly. I hope they are friendly.

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Q. In any of those conversations, have you ever asked him if they could take you back? A. I have never mentioned employment to him since I was fired.

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IRENE GLADYS WITTER, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address, please? A. Irene Gladys Witter, Pine Street, Hallstead, Pennsylvania.

Q. And you spell your last name W-I-T-T-E-R? A. That is correct.

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Q. Were you ever employed by Montgomery Ward & Company? A. Yes, I was.

Q. When were you first employed? A. I was first employed in 1942.

Q. And what was your job, how long then did you continue to work for the company? A. I worked approximately six months in the paint department.

Q. Did you ever go back to work for the company after that? A. Yes, I did, November 7, 1947. I was rehired.

Q. And what was your job at that time? A. I worked between the paint and farm department.

Q. Now, when you say the farm department, is that the department that Mr. Felker worked in? A. Yes, it is.

Q. And what was your job at that time? A. Well, at that time I was cleaning, my job was to clean and to assist Mr. Felker in any way that he seen that he needed me, that he needed help.

Q. Were you—did you also sell? A. Yes, I also sold.

Q. How long then did you continue to work? A. Until November the 24th, 1947. I was laid off. That was Christmas Eve.

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Q. Did you ever go back to work for the company after that? A. Yes, I went back in January of '48.

Q. And when you went back in January 1948, what was your job at that time? A. I was put back on the farm department and paint department again.

Q. Doing the same work as you previously had done? A. Yes.

Q. How long then did you continue to work for the company, Mrs. Witter? A. Until August the 19th, 1954, 6:00 p. m.

Q. Well, did you work continuously now? A. I am sorry, I beg your pardon. No, it was 1949. I quit in October, 1949.

Q. And where did you go to work then? A. I went to work for Sears Roebuck for more money.

Q. Did you ever go back to Ward's? A. Yes, I did. I was called back in 1950.

Q. Approximately when in 1950? A. In June.

Q. What do you mean when you say you were called back? A. Well, Mr. Orman who was the store manager when I left in '49 never was satisfied with the fact that I left and he had Mr. Lee Palmer, who was the assistant manager then,

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get in contact with me to see if I would come back to the store to work, and I was contacted at work. I was out at lunch at the time they contacted me. But, he left the message for me to come over to the store. He wanted to see me, and when I got home at night I had a telephone call at home that he had also called, contacted me there, and then in a couple of days I went to the store to see Mr. Palmer and he asked me if I would be interested in coming back for more money than—and I said, Yes, so I went back.

Q. And then you continued then to work in the store from that time around June of 1950 up to what time? A. Until August the 19th, 1954.

Q. Now, during that period of time what jobs did you have in the store? A. Well, at first I was left in the paint and farm department, and eventually I was transferred to the hardware department. I worked in auto accessories, worked in housewares, sporting goods, I worked in lingerie, hosiery, men's furnishings, men's work clothes, infants' wear, yard goods, domestics and in venetian blinds and I also have sold shoes once in the shoe department.

Q. Did you ever work on unit control? A. Yes, unit control, stock records and the stockroom.

Q. Now, in these departments that you worked in, like

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hardware, auto accessories, sporting goods and housewares, did you work there as a sales clerk? A. Yes, I did.

Q. And the same for farm equipment? A. Yes.

Q. Men and boys' department? A. That is correct.

Q. And the other selling departments? A. Yes, and the other selling departments I sold.

Q. You sold. A. I might say I also worked on the switchboard during that length of time too.

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Q. (By Mr. Cavers) Now, when you returned to the company in—were there ever any occasions when you worked at the switchboard when—when were you working at the switchboard about the time that Mr. DuFour came there? A. Yes, I was.

Q. That is, around the spring of 1954? A. That is right.

Q. At that time, did you ever have any applicants for employment?

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A. Oh, yes, you served on the switchboard as receptionist whenever an ad was ran in the paper, why, you served as receptionist and took the applications and referred them to the manager.

Q. Well, did you ever refer anybody either to Mr. Rumble or Mr. Brancato? A. Yes. On one occasion after Mr. DuFour came to the store I would say approximately two weeks they ran an ad in the paper for appliance salesman, and through that I sent applicants to Mr. DuFour.

Q. Well, how did you happen to send him to Mr. DuFour? A. Well, Mr.—excuse me, Mr. Brancato, you would ring him and tell him that you had an applicant

for such a department, which at that time was appliance, and then he in turn would say told me to take the application, call Mr. DuFour and tell Mr. DuFour that he was sending a person down there and for him to do as he pleased about the application.

Q. Now, when you returned to the company in 1950, were you a member of any labor organization? A. No, sir, I was not.

Q. During your course of employment with the company, did you ever apply for membership? A. Yes, I did.

Q. In any labor organization? A. Yes, I did.

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Q. Do you recall when? A. June the 3rd, 1954.

Q. And what labor organization did you apply for membership? A. Local 1687, Retail Clerks International Association.

Q. How did you apply? A. By signing a card.

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Q. (By Mr. Cavers) Where did you get General Counsel's Exhibit 11, Mrs. Witter, before you signed it? A. I received it at Mrs.—Mrs. Agnes Hurst's residence on 608 River Road, Shenango Bridge.

Q. When did you receive it? A. June the 2nd.

Q. What time? A. Well, I wouldn't know the exact time. It was in the evening after 6:00 o'clock.

Q. What was your occasion for being there at that time Mrs. Hurst's home? A. For the purpose of trying to organize the union.

Q. Well, was there a meeting there at that time? A. Was a meeting at 9:00, yes, there was.

Q. And who was present at that meeting? A. Mr Blair, who was the secretary-treasurer of Local 1687, M Buchholzer.

Q. Mr. Fred Blair? A. Yes.

Q. And Mr. Buchholzer? A. Yes.

Q. That is spelled B-U-C-H-H-O-L-Z-E-R?

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A. I believe that is correct.

Q. And Mr. Lepri? A. Al Lepri.

Q. L-E-P-R-I. And who else? A. And Mrs. Hurst Ruth Brewer, Ruth Taylor, Mildred Knapp, Domonic Romano, Emerson Summers, and I believe Charles Bishop who is no longer employed at the store, he was there also

Q. Now, with the exception of Mr. Blair, Mr. Buchholzer and Mr. Lepri, all these people were employees of the Montgomery Ward store, is that correct? A. Yes sir

Q. Now, it is your testimony then that you received General Counsel's Exhibit 11 at that meeting? A. That is correct.

Q. And then did you subsequently sign it? A. I signed it the next day, June the 3rd.

Q. Now, what did you do with it after you signed it? A. It was given back to Mrs. Hurst.

Q. Did you ever solicit any of your fellow employees to join the union? A. Yes, I did, several of them.

Q. Who? A. Well, in particular Mrs. Boone, who worked in the store, and there was a Mrs. Harry Harris and Mrs. Andrews.

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Q. What do you mean when you say that you solicited these three people to join the union? A. Well, I talked to them concerning union and what the union was, what it

stood for. They couldn't seem to see what the union could do for them and what good the union was, and I talked to them concerning what it would do for you.

Q. And when did you talk to them in relation to June the 3rd when you signed your card? A. I would say at least probably two days.

Q. After that? A. After that.

Q. Now, did you ever sign anybody up for the union, that is, to get any of your fellow employees to sign cards? A. Yes, I gave cards to three people that I can think of right now that I gave them to.

Q. Who were those three? A. I gave one to Frank DeAngelus, who was in the shoe department. I gave one to John Siedlecki, who was in the tire department, and one to Frank Felker who was in the farm department.

Q. Did you ever attend any union meetings after you signed your card? A. Yes, I did.

Q. Approximately how many? A. One in June, and July and two in August.

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Q. Did you vote in the National Labor Relations Board election held on August the 17th? A. Yes, I did.

Q. That was held in the store? A. That was held in the store in the employees' entrance.

Q. Do you know Mr. William Buchholzer? A. Yes, I do.

Q. He is the good-looking fleshy gentleman sitting over there? A. That is him.

Q. Did you ever talk to Mr. Buchholzer in the store? A. Yes, I have on several occasions.

Q. Do you know whether or not Mr. Rumble ever saw you talking to Mr. Buchholzer in the store? A. Yes, I believe he did. One day Mr. Rumble stood by the outside

door, by the shirt department, and Mr. Buchholzer was talking to me and I at that time told him, I said, there is Mr. Rumble, our store manager, standing by the door and he said, well, good, I think I will go over and talk to him, at which time he left me and went over and what happened then—what happened between them, I know he introduced himself to Mr. Rumble at that time.

Q. Well, after that did you see him talking, what appeared to be talking to Mr. Rumble? A. Yes, they seemed to be talking for a minute or so.

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Q. When did this occur? A. Well, this was before the election.

Q. Did Mr. DuFour ever talk to you about the union? A. Yes, he did.

Q. When did he first talk to you about the union? A. Well, the first time that I recall him talking to me about it was in between the meetings, the second and the 10th of August, because he questioned me as to whether I had signed a card and I said, yes. I waited a long time to see this happen.

Q. Well, what—did he say anything to you at that time? A. Oh, he told me that I would lose my job fooling around with the union.

Q. Did you ever talk to him again after that about the union? A. Yes, I talked to him about ten days, I would say approximately ten days before the election. One day he approached—we were talking, I wouldn't remember what the whole conversation was, but the union did come up and he told me at that time, he said, "Well, I would wouldn't get mixed up with this union business because," he said, "you are liable to lose your job." At that time

said, "I think that is my business." And, of course, the conversation dropped right there that day.

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Q. (By Mr. Cavers) Did you talk to Mr. DuFour again that day? A. Yes, again that afternoon on the main floor, yes, I was working, he came through and—

Trial Examiner: What was the date of this first conversation with Mr. DuFour?

The Witness: I would say around the 7th, probably, approximately.

Trial Examiner: Before the election?

The Witness: Yes.

Trial Examiner: All right.

The Witness: And then the next conversation was around the 9th, I would say I would think around probably there.

Q. (By Mr. Cavers) And you saw him, you told us about one conversation that you had with him around the 9th. Did you talk to him again that day? A. Yes, late that afternoon he came through on the main floor, he came through and I was getting a drink of water. I remember, and he stopped me, and was talking to me then, and he said to me then, he said, "Gladys, I still wish you

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wouldn't get mixed up with this union business because you will only lose your job."

Q. Now, did you ever wear a union button? A. Yes, I did.

Q. When did you wear this union button? A. I wore the union button on the 18th and 19th of August.

Q. That is the day following and the second day following the election? A. That is correct.

Q. Where, on your person, did you wear this union button? A. I had it on a collar of a blouse. I had a skirt and a blouse on, and I had it on the collar of my blouse.

Q. And do you recall, was there anything written, was there any writing on this union button? A. Yes, I believe it said, "Retail Clerk's Union, A. F. of L.", and then the month "August".

Q. And will you just point with your hand what you mean by on your lapel. A. Well, I had a collar. I don't have a collar on this dress, and I had it right on the collar (indicating).

Q. And did you wear it all day on the collar?

Mr. Plone: Mr. Cavers, will you describe what the witness pointed for the record.

Mr. Cavers: The witness referred to the lapel of her coat similar to the lapel on a man's suitcoat.

Mr. Plone: On the left side.

Mr. Cavers: On the left side.

Q. (By Mr. Cavers) Is that right? A. Yes, right here I had it, yes.

Q. And was the button in plain view so that other people could see it? A. It certainly was.

Mr. Dickson: I object to it, it is a conclusion.

Mr. Cavers: All right. I will withdraw that.

Mr. Dickson: Ask her how big the button was, whether it was bright red or something like that.

Q. (By Mr. Cavers) How big was the button? A. Well, I would say it was as large as a nickel.

Q. And do you recall the color of it? A. I don't recall offhand, but I believe it was red. It seems to me it was red.

Q. Do you have the button any more? A. No, I gave it to my son. I don't have it any more.

Q. Was the button covered up by anything? A. No, it was not.

Q. Now, on either the 19th—strike that. Did you wear the button all day on the 18th? A. Yes, I did.

Q. And all day on the 19th? A. That is correct.

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Q. On either the 18th or 19th, did you talk to Mr. DuFour? A. Yes, I did.

Q. On which of those days? A. On the 19th, the afternoon.

Q. And where were you when you talked to him? A. I was in the basement putting away toys.

Q. And about what time? A. Well, I would say it was shortly after lunch hour, it was around between 1:00 and 2:00 o'clock.

Q. And what did he say to you and what did you say to him? A. We stood talking, and I don't remember what the whole conversation was, I was putting away toys, and he was, I believe, he was looking at the toys and talking and he said, "Look what she's got on her collar."

Q. And what, if anything, did you say? A. I said, Yes, and I am proud of that button. I waited a long time to wear one."

Q. What, if anything, did he say? A. Well, I wouldn't have anything to do with the union or anybody in it, if I were you.

Q. Now, how long did you continue then to work for the company? A. August the 19th, 1954, at 6:00 p. m.

Q. That is the same day that you had the conversation that you have just related with Mr. DuFour, is that right?

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A. Yes, I did.

Q. Until about what time? A. 6:00 p. m.

Q. Now, were you paid that day? Did you receive your pay that day? A. Yes, I received my pay when I went to lunch at 4:00 p. m.

Q. And where did you go to get your pay at 4:00 p.m.? A. At the cash office on the furniture floor, on the 5th floor.

Q. And how are you paid by check or cash? A. By cash.

Q. And the cash was in an envelope? A. That is correct.

Q. Now, when you got your pay at 4:00 p. m. that day did that pay you up to the close of business that day prior? A. Yes, it did from Wednesday night.

Q. Now, then what happened at 6:00 p. m., if anything? A. At 6:00 p. m. when Mr. McGraw who was in the pay department came back--

Trial Examiner: I am not quite clear now, you didn't know you had been discharged at 4:00?

The Witness: No, I didn't know it at 4:00.

Trial Examiner: I am sorry, Mr. Cavers.

Mr. Cavers: That is all right.

A. (Cont'd) --at 6:00 p. m. when Mr. McGraw came back from

supper he said Mr. Brancato wants to see you in the office.

Q. (By Mr. Cavers) And did you go to the office? A. Yes, I went upstairs to the office at that time.

Q. And who did you see, if anyone? A. I saw Mr. Brancato sitting at Mr. Rumble's desk.

Q. Did Mr. Brancato talk to you? A. I said, "Mr. Brancato, you wanted to see me?" He said, "Yes, come in and sit down." Which I did.

Q. And what did he say to you? A. He said, "Gladys, I am afraid I have got bad news for you," and I said, "Yes, what is it?" He says, "I have got to let you go."

Q. What did you say? A. Of course, I said "Why?" It was amazing to me. I said, "Why?" "Well," he said, "well," he said, "I just can't carry you on the payroll any longer. You are on a non-basic payroll." He said, "I can't carry you there any longer." So I said, "Well, that is news to me." And I said then, "Then I am fired?" And he said "Yes."

Q. Now, did you receive any pay at that time? A. Well, at that time, Mr. Brancato offered me my time card for that day's work and the pay envelope stapled to it, as usual, and I said, "What is that?" He said, "That is your day's pay." And, of course, I refuse to take it and refused to sign it. I told him I wasn't going to take

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and I wasn't going to sign anything.

Q. But, the pay that he offered you was the pay for that day? A. Would be for that day.

Q. Which was Thursday? A. That is right.

Q. Now, when you were rehired by the company back in June of 1950, was any mention—who hired you at that time back in June of 1950? A. Mr. Lee Palmer. He was the personnel manager at that time.

Q. Mr. Palmer or any other official of the company at that time notify you that you were on a non-basic payroll? A. Never. After being there as long as I was, it never dawned on me that that was it.

Q. Did anybody—any manager or assistant manager or other official of the store from June of 1950 until October the 19th, 1954, ever mention to you that you were on non-basic payroll? A. No, sir, they didn't.

Q. Now, did Mr. Brancato ever talk to you about union? A. Why, in a joking way he did one day, yes.

Q. When was this? A. Well, this was two or three days before the election.

Q. And where did this conversation take place?

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A. Well, I was on the main floor by Mrs. Hurst's department at the time that it happened and he came down through the department and talked about merchandise which he was looking over, he was looking over some new merchandise that she had gotten in, and he said, "Well, you know, Gladys, we are not going to let you vote in the election." Of course, I said, "Well, why is that?" Well, there had been a joke around the store, I had worked in so many different departments, in the basement, that they called me supervisor just as a joke, so he said, "Well, you are a supervisor of toys and a supervisor isn't allowed to vote." So, of course, I said to him "I intend to vote, and you know I intend to vote Yes."

Q. Now, did you hear the testimony of Mr. Rumble yesterday? A. Yes, I did.

Q. Did you hear him testify that he had a conversation with you about the catalog department? A. He never had any conversation with me concerning that.

Q. Well, did he ever talk to you about the catalog— A. Never,—only that—well, I went to him, if that is what you mean. I went to him one time and told him that I heard there was going to be a vacancy, the girl, Mrs. Julia was out ill at the time.

Q. Now, when—can you recall when you went to him? A. Well, I know it was before the election, but I would

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remember just the exact day. It was some time in Augu

Q. What did you say to Mr. Rumble? A. Well, I said to him, "Mr. Rumble," I said, "I understand Mrs. Juliano isn't coming back, there is going to be a vacancy in the catalog department." And he said, "Well, yes, there is." So, I said, "Well, how about giving me a chance at it?" So he says, "Hell, I wouldn't give you a department in the store." And I said, "Well, what have you got against me?" He said, "Gladys," he said, "Nobody in the—they don't like you, they—nobody in the store likes you, and nobody wants to work with you." So I questioned him. I said, "Well, would you tell me who said that? What girls?" He said, "The girls on the main floor." And I asked him what girls and he would not give me the names. I said, "I would like to find out myself." He said, "Well, if you go downstairs and try to kick up any fuss and find out who it was," he said, "I will have to dismiss you." And I left his—and I told him—he said, "The best thing for you to do is to look for another job." So I told him, "I am not going to be the only one that is looking for another job," and I am not leaving. And I left his office.

Trial Examiner: When was this conversation with Mr. Rumble?

The Witness: Well, it was before the election in August.

Q. (By Mr. Cavers) Do you recall how long before?

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A. Gosh, I wouldn't say—I couldn't say if it was a week or ten days.

Trial Examiner: Mr. Rumble said it was around July 1st, would that—

The Witness: No, it was later than that.

Q. By Mr. (Cavers) Do you recall Mr. Rumble testifying yesterday that either he or Mr. Brancato—I forgot

which—offered you a job on the switchboard? A. I was not offered a job on the switchboard. Mr. Brancato frankly told me that I was supposed to take the switchboard.

Q. Now, when did he tell you that? A. Well, the girl who was on the switchboard was out in March and it was shortly after she came back. Now, I don't remember how long she was out, it must have been in April. After she came back from her illness, back to the store, he told me then that I was supposed to take it.

Q. And what, if anything, did you tell Mr. Brancato at that time? A. Well, I asked him if there was more money and he told me he would have to consult Mr. Rumble, at which—

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Q. In addition to your $35 a week, did you receive commissions on certain sales? A. Well, I was on a commission basis, but I didn't seem to be left in one department long enough to make much commission, only certain months of the year.

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Q. And how frequently would you say that you worked down in Mr. Felker's department during 1954, the year 1954? A. Well, that would be—it would be rather hard to determine because there was so many little times, maybe I'd go down for one day. Maybe I'd go down for two or three hours, and then like maybe I would go down for three or four days.

Q. Well, could you be a little more definite as to the number of times a week or the number of times in a month that you would be down there during 1954? A. Well, I could say approximately twice a month.

Q. And then you would also be down there during the week that he was away on vacation?

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A. Just a few days during that week.

Q. A few days during that week. Now, the few days that you were there in his department while he was on vacation what was the condition of his department with respect to cleanliness, could you describe it? A. Well, at that time his department was almost—almost every counter was tore up and stuff piled on top of it, which was being used to re-lay Division 48, toys.

Q. Now, on the prior occasions when you were in his department prior to that, what was the condition of his department with respect to cleanliness? A. Well, I always thought he had a pretty good department myself.

Q. Well, would you say that it was clean or that it was dirty? A. I would say that it was clean.

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Q. Did you work in unit stock control during the portion of 1954 from January 1 until you were let go? A. Well, then I worked then just—see, I left unit stock control and went back to the floor, but I worked in there once in awhile when they had been—when they would be rushed with orders or something, I would go up and help write orders.

Q. That was during 1954? A. That is right.

Q. And how many occasions can you remember in 1954 that you were sent up there during rush periods to write orders? A. Oh, I would say at least five or six different times.

Q. Five or six different times. And on those occasions for how long a period of time would you be in unit stock

control? A. Well, sometimes all day, maybe two or three days.

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Q. Now, I am speaking with respect to 1954. A. Yes.

Q. Who was the head of unit stock control? A. Ruth Brewer.

Q. During 1954? A. Yes.

Q. Any time during 1954 that you worked under Ruth Brewer in unit stock control did she ever criticize your work? A. Never.

Q. Did Mr. Rumble ever criticize your work? A. Not to me.

Q. In unit stock control? A. Not to me personally, no.

Q. In 1953, I believe you said you worked in unit stock control? A. Yes.

Q. And who was the head of unit stock control at that time? A. Ruth Brewer was.

Q. Did Ruth Brewer ever criticize your work when you worked under her in unit stock control in 1953? A. No, she didn't. In fact, she asked me to stay when I took a transfer back to the floor, she asked me to stick it out and stay up there with her.

Q. When did this occur? A. Well, it was just before Christmas of '53 when I asked

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for a transfer back to the floor because I felt I could make more money on the floor.

Q. Did you ever work at the catalog order desk? A. Not since Mr. Rumble has been there. I didn't work there steady. Once in awhile I would be down there—I would be down when the girl was actually busy, like on a Thursday or a Saturday, but not as a steady employee at the catalog desk, no.

Q. During 1954, while you worked for the company, how many occasions did you work at the catalog order desk, could you tell? A. I would say three or four.

Q. And when was the last time that you worked on the catalog order desk? A. That would be hard to—for me to say because I was so many places, so many different times, and it would be hard for me to say just which month it was. It probably could have been in June.

Q. Well, who had charge of the catalog order desk? A. Hilda Julian.

Q. Did Hilda Julian ever complain to you about your work when you worked at the catalog order desk? A. No, she didn't. When I was working in an adjoining department she would call me over lots of times to give her a hand to help her out when she was doing something.

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Q. Did Mr. Rumble ever complain to you about your work at the catalog order desk? A. Never spoke to me, no.

Q. Did Mr. Brancato? A. No.

Q. Did Mr. Brancato ever complain to you about your work in unit stock control? A. No, he didn't.

Q. At the time you worked under Mr. Orman did he ever complain to you about your work in unit stock control? A. No, Mr. Orman never complained to me at all.

Q. You worked in the hosiery department? A. Yes, I did.

Q. Under Mrs. Marold? A. That is right, Marold.

Q. Did Mrs. Marold ever complain to you about your work? A. No, she didn't.

Q. Did you work in the boys' wear department? A. Yes, I did.

Q. Was that under Mrs. McTigue? A. Yes, it was.

Q. Did Mrs. McTigue ever complain to you about your work? A. No, she didn't.

Q. Now, you also worked at the switchboard? A. Yes, I did.

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Q. And you were working at the switchboard, I believe you testified, in April of 1953? A. '54, yes.

Q. While you worked at the switchboard in 1954, did you also have something to do with the running of tapes? A. Yes, your duties on the switchboard also used to run tapes occasionally for the cash office.

Q. Now, will you explain to the Trial Examiner, what the job of running tapes consists of? A. Well, every cash register they do not ring just for the one division, and that they have different divisions on every merchandise that you sell and it is ticketed with a division. It might be 29 or 33, or whatever division would be nearest to that cash register. Your money is rang on that register and it is registered on the tape, that tape is about that wide (indicating) what you have sold, what the price of it was, and the division that you sold it in.

Then that tape in turn at night the register is read and that tape is totaled and it is sent to the cash office. The cash office in turns takes figures from it and adds figures to it and then it is sent out to the girl on the switchboard to run a tape for the total of each division on each tape. So that they know how much money was taken in for one division in that particular cash register.

Q. Now, if there is a department, let's say, that consists

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of three divisions for illustrative purposes, let's say that this department consists of divisions 1, 2 and 3, we will call it. Now, these—then these three divisions all use the same cash register, is that the point? A. Well, if you

are nearest to that cash register, that is the one you use. I mean, if your merchandise is in a particular place where you are nearer the cash register, that is the register that you use.

Q. And if the merchandise that you are selling then comes out of Division, let's say, 1, do you press the one? A. That is right.

Q. That is right. And the amount? A. And the amount, and then you have a certain letter there that you write.

Q. I suppose the letter would designate— A. The sales clerk.

Q. (Cont'd) —the clerk which would be you. A. You do the same thing for a sale of merchandise out of Division 2—

Q. You do the same thing for a sale of merchandise out of Division 2 or Division 3? A. That is right.

Q. Now, then at the end of the day or at the end of the period is that tape that you speak of, that paper— A. Yes, it is.

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Q. And is it the type of paper that the stenographer is using here on his stenograph? A. Yes.

Q. Approximately that wide? A. Yes.

Q. And it registers this information on that white paper? A. Yes.

Q. Now, at the end of the day or at the end of the period when the tape is taken off, does the cash register have a total? A. Yes, it does.

Q. And when you run the tapes after the cash office have put another figure on there, which I wouldn't—not working in there, I wouldn't know where they got their figure from, you have to batance your tape with that figure.

Q. In other words, in the illustration that I gave you, the total of the sales of Division 1, 2 and 3 on that tape would have to equal the total, the grand total at the bottom of the tape, let's say. A. Yes, that is correct. After you have subtracted another certain figure that you have to subtract from that.

Q. Yes. Well, who was in charge of you then while you were running tapes when you were on the switchboard? A. Well, Ann Rando was the cashier and she has always—she is always the one that would bring the tapes out to you

and give you the tapes.

Q. Now, did you ever make any mistakes or errors in running tapes? A. Well, if you run a tape and it don't balance the first time you have got to run it over again. That is the only thing anybody can—anybody can make a mistake, and it is rerun, you rerun it, but you never hand a tape into the cash office unless you have got that correct. It has to be right before they will accept it.

Q. And this girl's name was what? A. Ann Rando. R-A-N-D-O.

Q. Well, did Ann Rando ever criticize your work? A. No. Ann asked me one time why I didn't keep the switchboard, and stay there because I could run tapes and do so many things to help her out.

Q. Now, did Mr. Rumble ever criticize your work of running tapes? A. Not to me, he didn't.

Q. Did Mr. Brancato? A. No.

Q. Did anyone, an officer of Montgomery Ward ever criticize or complain to you that you were making too many errors in the running of these tapes? A. Never to me, no.

Q. Other than the occasion that you have related to us and

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which you had a conversation with Mr. Rumble about the catalog department, was it, did Mr. Rumble ever criticize your work? A. Never at all.

Q. Mr. Brancato? A. No, sir.

* * *

CROSS EXAMINATION:

Q. (By Mr. Dickson) * * *

Q. Now, in the years that you were with Wards, you covered pretty well the whole store, didn't you?

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A. That is correct.

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Q. Did Mr. DuFour have any authority over you? A. No, he never did over me.

Q. You mentioned the time when he said something to you about your losing your job if you fooled around with the union; did you think that he had the power to make you lose your job? A. Not to make me, no.

Q. Now, you spoke about an occasion two or three days before the election when Mr. Brancato spoke to you in a joking way about not having—not letting you vote in the election because you are a supervisor of toys, you recall * * ? A. That is right.

Q. And he was speaking jokingly at that time? A. Just jokingly, that is correct.

Q. You didn't in any way consider that as a threat to you, did you?

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A. No, no, I didn't.

* * *

Q. Now, you spoke of Mr. Brancato telling you that you were supposed to take the switchboard, was he saying that as a

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permanent position, do you know? A. Well, I would take it that way. He told me he said—well, you know you are going to take the switchboard after Betty comes back from vacation or from sick leave. It seemed that a new procedure was being followed in the cash office and they were going to take the switchboard operator to help with the cash office work. Therefore, they needed another girl besides the switchboard operator to do office work there, too, so I was just frankly told that I was supposed to take the switchboard and I was not asked to take it.

Q. You were—pardon me. A. (Cont'd) I was not asked to take it. I was told I was supposed to take it.

Q. Well, did you take it? A. No, I didn't.

Q. You refused it? A. I refused it. I didn't necessarily refuse it. I told him I did not want it because it never paid any more money and he told me he would have to talk that part over with Mr. Rumble.

Q. Well now, at that time you were earning $35 a week as a regular draw, as a saleswoman, isn't that right? A. That is right.

Q. And you said you didn't get much commission in addition to that?

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A. Well, see, I wasn't left in one department long enough to reach a quota.

Q. Yes, I understand that. A. (Cont'd) —so I didn't have a chance to make any commission.

Q. You would just get used to the stock and they would move you somewhere else? A. That is correct.

Q. Whatever the reason might be, you weren't getting much, if anything, over the $35 a week? A. No.

Q. And this paid $33? A. That is right.

Q. So that would be $2.00 less a week? A. Uh huh.

Q. Was that the reason that you didn't want it? A. No, the reason was I wanted more money for the amount of work that you had to do. I thought it was worth more money.

* * *

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Q. Did Mr. Brancato say anything to you about what would be paid to you if they—if you went on the switchboard? A. He told me a few days later that he had talked to Mr. Rumble and that there was no chance of me having any more money than what I was getting, the regular $35.

Q. So you would have gotten the thirty-five that you were getting? A. That is right.

* * *

Q. I see. When you were working on the switchboard, you mentioned that you handed out application forms? A. That is correct.

Q. And was it customary to send the applicant down to be interviewed by the department head? A. No, the procedure was only followed through Mr. DuFour, always you would contact the operating manager who at this time happened to be Mr. Brancato, but in these particular cases, he had told me, after I would call him, he would tell me to send them down to DuFour.

* * *

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Q. Now, after you were discharged on August 19th, you talked to Mrs. McTigue again, didn't you? A. Yes, I did that evening.

Q. After the store was closed? A. Well, it was—I wouldn't know just exactly what time it was. It was after I was discharged.

Q. And did you tell Mrs. McTigue that you had been released because you were non-basic after seven years? A. That is correct, that is what I told her. The reason given to me.

Q. And that is what Mr. Brancato told you, wasn't it? A. Yes.

* * *

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Q. (By Mr. Dickson) I show you a document which has been marked Respondent's Exhibit 1 for identification and ask you whether or not that is a catalog order written at the Binghamton, New York, store? A. Yes, it is.

Q. Did you write that order? A. Yes, and if you will notice this here is the referral that I had written and taken back to Mrs. Julian which in turn she is supposed to write the order.

Q. Now, by "this here" you are referring to?

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A. This (indicating).

Q. Let me describe it for the record. You are referring to a little slip of paper attached to the front of the order marked "special service request", is that right? A. That is right, that there is a referral which you give to a customer or take a customer back to the catalog desk for them to order the merchandise, because you don't have it in stock. Down here you will notice it says "sales clerk", that is my number and my name. I had written this up for Mrs. Julian, taken it back to the catalog desk and when I took it back evidently she had been busy and told me to go ahead and write the order, which happened on several occasions, and as it says here "call rejected

"unclaimed." All right. Now, this evidently has been filled in wrong, item ordered. You will notice here it says "9795 M". That is the same merchandise that the customer told me to order. I wouldn't have written it on that ticket. Down here it says that the—"will call rejected" and it is marked unclaimed. Evidently, the customer never came into the store. This evidently has been written "wrong item ordered" because if it had been wrong, it would have said so up here, it wouldn't have said "unclaimed".

Q. This has a date up at the top 5-8, as I read it? A. That is right.

Q. Would that be May 8th, 1954?

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A. That is right, that would be right. Let's see. If there is any other date that tells what year it could be.

Q. There is a C. O. D. stamp on it? A. Yes, but it doesn't give any special date on it as to what year it could have been.

Q. Would that be your recollection or would you say? A. That wouldn't be a recollection, but I know this is what happened on a lot of these that I have taken back to Hilda.

Q. And you wrote the order yourself including the name "Julian" up here? A. That is correct, because when you took a catalog referral back to the girl and she asked you to write it, you can't put your name on this, your name goes on this. You get credit for this, but she gets credit for this.

Q. Now, there is a space at the top where it says "Phone" and that is left blank, is that— A. That could be.

Q. Just let me finish my question. Is that intended

for the phone number of the customer? A. That is providing they have a telephone. Lots of customers come in, they don't have a telephone.

Q. Now, there is a column on there in color which is blank. Should that be filled in? A. No, your number usually designates as to your color and

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to your item. Now, that 9795 in this ticket—in this particular item, which is a wood picket fence, which they would—there would not be—it would be white because that is the only kind that they would sell in the small fencing.

Q. I will show you another document which has been marked Respondent's Exhibit 2 for identification and ask you whether that is another catalog order desk—desk order from the Binghamton store? A. Yes, I remember this customer ordering this. I—the customer had ordered this and as I recall now, I could be wrong on this name, but I believe it is a gentleman who I know who he is. He comes into the store a lot. He is a good customer of Ward's. His name is Rodney Lantz, and he came in, it seems he ordered a spike-tooth harrow for a one and a half horsepower tractor which he never received, so he came back in and he either didn't come in—either the wrong thing came in or he asked me to re-order it for him, and this was an order that was rewritten, but I was not working in the catalog department at the time. I was just writing these orders when Hilda was busy.

Q. Were you supposed to or had you received any instructions as to whether under those circumstances you should write in her name or yours? A. Yes, she had always said put my name on it, that was

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always.

Q. She told you about that. A. That is right, that was always told you when—

Q. But you— A. Because you didn't get any credit for it just going back and writing the order.

Q. I see. The girl who had charge of the catalog desk was the one who got the credit? A. That is right. She got the credit. You never got it.

Q. Except you got a commission if you referred somebody. A. If you referred it, but as I remember there was referrals on that, and I believe this referral had Frank Felker's name on it because Frank had either ordered that for the customer, the customer had gotten the wrong one and I had re-ordered it or else in Frank's merchandise it had been sent and had been re-ordered. I believe there was a referral on it for Frank's customer because I remember the man.

Q. This one I notice likewise doesn't have any phone number given? A. That is right, sometimes they don't have any telephone number.

Q. Would you say that was because the customer didn't have a phone? A. I would say that is probably the reason.

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Q. There is nothing said there about size and color either? A. No.

Q. Would you say that was unnecessary? A. Well, it says right there "spike-tooth harrow for one and a half horsepower tractor" and that designates the spike-tooth harrow that would fit that certain tractor.

Q. I show you a document which has been marked Respondent's Exhibit 3 for identification and ask you if that is another catalog desk order from the Binghamton store? A. That is correct, it is.

Q. And this has a date stamped on it, May 14, 1953—I mean, 1954, would you say that would be approximately the date? A. Yes. Well, I wouldn't know.

Q. About the date, but this was— A. This was, I believe, filled. It must have been there, I don't remember just when we sent it, but I would say yes, that was one.

Q. And that is one also that you filled out? A. That is also one that I filled—that I wrote for her.

Q. I noticed that that one also doesn't have any number under the phone number, would you say that was because— A. That could be that the customer didn't have a telephone or lots of times a customer will say, I will come in in a

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couple of days and check with you and see if it is in, because I am in the store occasionally."

Q. And there is, I believe, no color stated, and would you say— A. No.

Q. (Cont'd)—that would be unnecessary? A. That would be unnecessary because it is 9701 which designates that it is a 42-inch picket fence and that has no color to it. It is just mainly copper color.

Q. I show you another document which has been marked Respondent's Exhibit 4 for identification and ask you if that is another catalog order from the Binghamton store? A. Yes, at the time I believe—yes, this is one that I wrote for—

Q. You wrote that one, too? A. Uh huh.

Q. Now, this one I note says on the bottom— A. Up here.

Q. Excuse me. It says "C-A-R-D", I don't know what that means. A. That means when a customer sometimes —now,—well, this one probably—well, there is no tele-

phone number. Lots of times when you have a telephone number you write that up there "Card". Send them a card because they don't have a phone, and that card means this customer didn't have

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a phone, and so you send a card to the effect that the merchandise was in the store.

Q. Otherwise you would notify them by phone, is that correct? A. That is right.

Q. And I notice where it says down here under amount received with order "None". That indicates that nothing was paid? A. That is right.

Q. In the order. Up in the slip in the corner, it says "Amount received with order" and there it is blank? A. Well, you generally leave that blank, yes, after you put it down here you generally leave that blank.

Q. What is the purpose of that little stub up in the corner? A. This here little stub is in case a customer—

Q. Don't tear it off. A. I am sorry. Is in case a customer pays you for the merchandise, you give them this little stub. Lot's of times you say, "Wait, I will give you a receipt." A customer is in a hurry, I mean, they will say never mind, don't worry. And if they don't pay any money on it, they don't always take that receipt, which is up to the customer themselves.

Q. And in one other likewise I notice nothing about size and color in that?

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A. No.

Q. And you would say that would be unnecessary? A. That would be unnecessary.

Mr. Cavers: Now, which Exhibit are you referring to now?

Mr. Dickson: Four.

The Witness: That was a luggage carrier and that would be unnecessary. That is from the auto accessories department. In fact, I remember taking the customer over and writing that order from the auto department.

Q. (By Mr. Dickson) All right. Now—

Trial Examiner: Was Exhibit 4 written by you for Mrs. Julian?

The Witness: Yes, it was, uh huh.

Mr. Dickson: Thank you, Mr. Examiner. I forgot that.

The Witness: It probably was a referral on that, but I notice it isn't on this, but I imagine the referral is probably taken off by itself. After the customer takes their merchandise, those referrals are taken off there—off of there, and they are kept. I am not positive, but I believe they are sent—they are either to the office or whether they send—whether they are sent back to Albany, I don't remember what is done with the referral, but those referrals you would have found had you found it altogether, all two orders, and the other one you would have found a referral

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with my name on it having referred to—the customer to that departm t.

Q. I now show you a document which has been marked Respondent's Exhibit 5 for identification and ask you whether that is another order written by you from the catalog desk in the Binghamton store? A. Yes, this is another one written—this one is an old one. This is one probably back quite a little—no, it is '54

Q. June, '54 it bears on that stamp. A. That is one when I was down there, and I believe at the time Hilda was off, and I was down there, she was having trouble with the bookkeeper, didn't have a bookkeeper, or something, and I was down there helping the girl who was in the department at the time, just helping her out during lunch hours and like that, and I believe that girl's name was Ann, something, I don't know what her last name is.

Q. I notice that this order, Exhibit 5, under "Taken By" says, "Witter", which is your name. How did that come about? A. Because shortly—at one time I had spoken to either Mr. Gutmann or Mr. Brancato. Mr. Brancato it would have been at this time. I said, "How come I go down in the catalog order department and I write up orders to help the girls out when they are busy, and I never get any credit for that referral." He says, "You will have to work that out

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among yourselves." I said, I am going down there and work all day, I'm not going to have to tell—I didn't write any orders because I put somebody's else's name on, so he told me to stop putting somebody's else's name on, which I did. I went and helped and put my name on it, but—I didn't want to look—I didn't want it to look as though I was doing nothing at all.

Q. You would say that probably happened again—between the time that you put up the first four exhibits and this exhibit 5? A. I would have to look at the dates before I know.

Q. Yes. Look at the dates, between Respondent's Exhibit 1, 2, 3 and 4. A. Yes. See, this is May and that is June.

Q. Sometime between there, would you think? A. That could have been between there, yes.

Q. And as you recall, it was Mr. Brancato? A. As I recall, it was Mr. Brancato, yes. After that he told me the—to put a referral on them. I was told, and I believe it was him also that told me to put a referral on, and—or else it was a department head. Now, I am not sure which one it could have been there in that case. It could have been him or it could have been the girl down there who told me to go ahead and put a referral on so that I would get credit for the work I was doing down there.

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Q. Now, I was referring to this, Respondent's Exhibit 5, I see down at the bottom it says "Amount Received with Order" $4.08. That would be the amount the customer paid, wouldn't it? A. That is right.

Q. Now, in the slip up here "Amount Received with the Order" in the corner, it is blank. Why would that be? A. You have the duplicate copy, you don't have the original copy. On the original copy you find your perforated line to tear off. You'll notice on your duplicate, there is no perforated line because this top is tore off and sent to Albany which gives this customer's name, Fanny Moran, and gives her credit toward a catalog. This part is never tore off until you get ready to send them back to Albany. That is why there is no perforated line to tear this off. It probably was tore off from the original order.

Q. Yes. Now, that would mean, I suppose, that you may have written this four dollar and eight cents on the customer's stub, but after it was separated from this carbon? A. That is right. Uh-huh. Because when—you are a bookkeeper and when you are working down there you—and you don't get that all filled out, in case a customer doesn't pay and you don't have your carbon, sometimes you tear it out, see, before you stop to think you have

that filled-in, when you are busy, so naturally, it is on your original copy.

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there was no carbon, so you go back lots of times to fill it out.

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Q. Were you in need by reason of these financial obligations of full-time employment? A. Yes, sir.

Q. You wouldn't have been interested in any part-time? A. I would have taken—

Mr. Plone: I feel I ought to object to that line of questioning. That is presupposing and just assuming, there is nothing in the record to justify that kind of a question, and it creates an inference based upon a conjecture.

Trial Examiner: No, I don't agree with you, Mr. Plone, I will permit it.

Q. (By Mr. Dickson) Will you— A. Put it this way, I never have been asked to take a part-time job, I would have taken anything to support my son.

Q. Would that have been adequate? A. Well, it wouldn't have been adequate, but it would have been better than nothing.

Q. I see. Now, have you been employed since you left Ward's? A. Yes, I was fired from Ward's August the 19th and the 23rd

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I went to work and I worked until a week ago Friday. I believe it was my last day of work, since then I haven't been working.

Q. Did you ever speak to Mr. Rumble or Mr. Brancato about your obligations to your son and so forth? A. Mr. Rumble knew it and also Mr. Brancato knew it because

I had gone to him different times and asked him for more money, and he told me, he gave me the hard luck story that there was no raises being granted.

Q. When was the last time you had such a conversation? A. Well, at the time, I believe, that he told me that I had—was supposed to take the switchboard. I told him then that I needed more money to live on.

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RE-DIRECT EXAMINATION:

Q. (By Mr. Cavers) Mrs. Witter, I show you what has been marked for identification as Respondent's Exhibit 1 and I ask you if that Exhibit was ever brought to your attention in any way after you wrote it up?

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A. No, sir, it was not.

Q. I show you what has been marked as Respondent's Exhibit 2 and ask you if that Exhibit was ever brought to your attention by anyone from the company after you wrote it up? A. No, sir, it was not, and I noticed on it that the customer took it, evidently, it is marked paid after C. O. D., it was marked paid, so it must have been all right.

Q. I refer back again to Respondent's Exhibit 1 for identification, are will calls ever rejected? A. Yes, sometimes.

Q. By a customer? A. Pardon me, yes, sir. They are. Sometimes a customer will come in and they will order the merchandise and they will order it with the understanding if I don't want it do I have to take it. So naturally, you are going to tell the customer, well, we will bring it is, you take a look at it and perhaps you decide you won't want the merchandise, therefore, a lots of times when the merchandise comes in perhaps a customer [illegible]

want it, maybe it isn't just what she thought the picture looked like in the catalog, so naturally if it is marked will call rejected and transferred back to wherever it came from—

Q. So, Respondent's Exhibit—I show you Respondent's Exhibit 3 and ask you if anyone ever called that exhibit to your attention after you wrote it up?

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A. No, and personally I don't see anything wrong with this, because it was marked paid, so the customer must have taken that.

Q. I show you Respondent's Exhibit 4 and ask you if you have ever seen that exhibit after it was written up? A. Yes, and that is another one marked paid.

Q. Well, did you ever see it again after you once wrote it up? A. No, you never see these after you write them up just—unless you happen to be there and when the customer comes back and the merchandise and that—what time you pull this out of the file to see if the customer's merchandise is in or what the story is behind it.

Q. And that is marked paid, is it not? A. Yes, that is marked paid over the C. O. D.

Q. That would indicate that the customer received the item and paid for it? A. That is right.

Q. I show you Respondent's Exhibit 5 and ask you if that was ever shown to you after you wrote it up? A. No, and this was sent direct to the customer because it is marked "Direct Ship".

Q. And is that one also marked paid? A. Yes, it is.

Q. Indicating that the customer paid and received for the

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item? A. That is correct.

Q. Did Mr. Brancato or Mr. Rumble ever call to your

attention after you had any of these exhibits, Respondent's Exhibits 1 through 5, after you wrote them up? A. No, sir, they did not.

Q. From the time you wrote them up to today, have you ever seen them before? A. I never saw them until today.

Mr. Dickson: I guess you better leave them over there with the rest of the exhibits.

Q. (By Mr. Cavers) Since you have been in the store, subsequent to your discharge, at any time has Mr. Rumble ever offered you a job? A. No, sir, he has not.

Q. Since you have been in the store subsequent to your discharge, has Mr. Brancato at any time offered you a job? A. No, sir.

Mr. Cavers: No further questions.

RE-CROSS EXAMINATION:

Q. (By Mr. Dickson) You never asked either of them for a job, did you? A. Well, you wouldn't go and ask them if they fired you. You would expect them to say, "Well, would you consider a part-time job" or something. I never was asked.

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Q. I am asking you a question, Mrs. Witter. A. No.

Q. What is the answer? A. I never asked them, no.

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IRENE McTIGUE a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address, please. A. Irene McTigue, 22 Morgan Street, Binghamton.

Q. Are you here today pursuant to a subpoena issued by the National Labor Relations Board?

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A. Yes, sir.

Q. Are you employed by Montgomery Ward & Company? A. Yes, sir.

Q. You are presently employed by them? A. Yes, sir.

Q. In the Binghamton, New York, store? A. Yes, sir.

Q. What is your present position with the company? A. Department head of Division 31 and 36.

Q. Is that the men's and boys' department? A. No, that is children's and infants' wear.

Q. When were you first employed, Mrs. McTigue? A. May 8th—well, it will be six years, 1949—May 8, 1949.

Q. Were you employed in the store of August of 1954? A. Yes, sir.

Q. You have been employed continuously since you were first employed May 8th, 1949? A. Yes, sir.

Q. And in August of 1954, what was your position with the company? A. Department head of 29, 33 and 34.

Q. What departments are those? A. That is underwear, men's, women's and children's, and little boys' clothing.

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Q. Thank you. Do you recall did you know at that time a Gladys Witter? A. Yes, sir.

Q. Do you recall when she left the company's employ, about the 19th of August, 1954? A. Yes, sir.

Q. Now prior to her leaving the employ of the company, did she work in your department? A. Yes, sir.

Q. For how long a period prior to her leaving, did she work in your department? A. Off and on probably a month or so, it was more to help out.

Q. Now, in that period of time, were you able to observe the type of a worker that Mrs. Witter was? A. Yes, sir.

Q. What type of a worker in your opinion was Mrs. Witter? A. She was O. K.

Q. Would you say she was a good worker? A. Yes, sir.

Q. At any time during 1954, did you complain to Mr. Rumble or talk to Mr. Rumble and tell him that you didn't want to work with Mrs. Witter? A. I told Mr. Rumble I had complained to Mr. Rumble, the complaint was—that I had work to do and I had asked

Mrs. Witter if she would help me, and she said she couldn't, she had work for Mr. Rumble to do, so I went back down near the elevator—near the towel department and the shoe department and asked Mr. Rumble if he would give her the work he had for her so we could get the rest of our work done. She was fixing clearance tickets at that time.

Q. Now, did you other than that tell Mr. Rumble that you didn't want to work with Mrs. Witter? A. No.

Q. Is that the only complaint that you ever made to Mr. Rumble? A. That is the complaint.

Q. Now, after Mrs. Witter left the employ of the company, did you ever ask Mr. Rumble for any help in your department? A. At the time that Mr. Rumble told me I would have helped, but I asked Mr. Brancato for some help because it was getting towards going back to school time and I was leaving on the 15th of September for a vacation.

Q. All right. Now, relative to the 15th of September, when was it that you asked Mr. Rumble for help? A. I didn't ask Mr. Rumble.

Q. I mean, Mr. Brancato? A. Mr. Brancato.

Q. Mr. Brancato. A. Well, I asked—I left on vacation on the 15th and it was

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about two weeks before that.

Q. Did you ask him for help in your department? A. To help me.

Q. In what—and what did Mr. Brancato say? A. He said he would get help.

Q. Did you then get help? A. Yes, sir.

Q. And who did you get as help? A. Mrs. Mildred Ferry.

Q. When did you get the help, that is, when did Mrs. Ferry come to work with relation to the time that you asked Mr. Brancato for help? A. When did she come to work for me, you mean?

Q. Yes. A. The 28th of August.

Q. And is Mrs. Ferry still working there? A. Yes, sir.

Q. Has she worked continuously since that time? A. Yes, sir.

Q. Is Mrs. Ferry doing the same type of work in your department that Mrs. Witter did when she worked there? A. Yes.

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CROSS EXAMINATION:

Q. (By Mr. Dickson) Mrs. McTigue, is there any difference

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in the business done in Divisions 29, 33 and 34 between August and September normally? A. Was there any difference in business?

Q. Yes, the volume of business, in the amount of business? You do more in one of those months than the other?

A. Back to school, just before Labor Day, you are quite busy for about three weeks, and the week after you go back to school, too, is your good week.

Q. That would be early in September, would it not? A. Yes, sir.

Q. And you would be more in need of help at that time than you would be earlier, wouldn't you? A. Well, I guess so, sir.

Q. And at the time that you asked Mr. Brancato for help, did you mention to him about your going on your vacation too? A. Oh, yes, sir.

Q. And did you have any help at that time? A. No, sir, I did not.

Q. So your department would have been unattended if you hadn't got it? A. That is right, sir.

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Q. You saw Mrs. Witter, I believe, just after she was discharged, didn't you? A. Yes, sir.

Q. That same evening? A. Yes, sir.

Q. And didn't Mrs. Witter tell you that she was released because she was non-basic after seven years of employment? A. Yes, sir.

Q. Was that in substance what she said? A. That is the true words.

Q. And did you know what she meant by that? A. Well, at the time I didn't.

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Q. You know now what she meant? A. Yes sir, we have been told since then.

Q. Mrs. McTigue, did you ever at any time hear anything to indicate that Mrs. Witter was discharged be-

cause of her activities on behalf of the union? A. No sir, I did not.

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RE-DIRECT EXAMINATION:

Q. (By Mr. Cavers) In answer to a question by Mr. Dickson, Mrs. McTigue, I think you said that—how long a period before school starts did you say the—this school—the increase in business occurred? A. Well, your business starts to pick up before they go back to school.

Q. For how long a period of time before? A. The full period.

Q. Yes. A. Well, if you want to count a week after going back to school, it would be four weeks.

Q. So this increase in business in what we'll say school clothes, I presume— A. Yes.

Q. (Cont'd) —lasts or spreads over a four-week period? A. Yes, it does.

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Q. And the four-week period comprises of a week after school starts, is that correct? A. That is right, yes sir.

Q. Plus three weeks prior to the starting of school? A. Yes.

Q. So that the increase starts then along about the middle of August or maybe even a little befgre, is that correct? A. Sure, yes.

Q. And that is why you requested Mrs. Ferry— A. I didn't request Mrs. Ferry.

Q. Well, requested additional help, I am sorry? A. Yes. Well, it wasn't only that, no.

Q. You were also going on your vacation? A. It wasn't only that.

Q. All right, what else? A. I have 29—Division 29, I

have Division 33 and Division 34. In September you also get your plans laid out for your heavy underwear, and therefore you have four books in Division 29 to do. At the time we had three books in 33 to do, and also every Tuesday morning I had a New York Replenishment Report which had to be done, and Mr. Rumble promised me I would have help when I had those set up.

Q. Now, as to another question by Mr. Dickson, I believe you related an incident in which after Mrs. Witter was let go, that she went and came to you and mentioned something

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about being released because she was non-basic? A. Yes.

Q. Now, did you—did she tell you that she was released because she was non-basic or did she tell you that that was the reason that she was given?

* * *

A. Mrs. Witter told me that she was released because she was non-basic, that was the only reason.

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Stenographic Transcript of Testimony at Hearing of January 13, 1955.

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PROCEEDINGS

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DOROTHY MAROLD a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address, please? A. Dorothy Marold, R. D. 1, Conklin, New York.

Q. And your last name is spelled M-A-R-O-L-D? A. That is right.

Q. Are you employed at the present time, Mrs. Marold? A. Yes, I am.

Q. Whom, by whom? A. Montgomery Ward & Company.

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Q. That is in their Binghamton store? A. Yes, that is right, sir.

Q. And what is your present position with the company? A. I am department head in the hosiery department.

Q. Now, when were you first employed by Montgomery Ward? A. February 1st, 1954.

Q. And what was your position at that time? A. Well,

I was just hired in that same division where I am now, just at—just a helper at that time. I was not department head. There was someone else there at that time.

Q. And you later became a department head? A. Yes, I did.

Q. Do you recall about when? A. Approximately three weeks later.

Q. Now, do you know Mrs. Gladys Witter? A. Yes sir, I do.

Q. Did she ever work in the hosiery department with you? A. She did.

Q. Do you recall when she worked in the hosiery department? A. She was in the hosiery department the first day that I was there.

Q. Now, the first day that you came there, who showed you the procedure? A. Well, we were closed for inventory that day, there was no selling, but Gladys Witter did show me the cash

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register procedure that day because I didn't know how they worked and so on, so she showed me at that time.

Q. She explained, in other words, the cash register procedure? A. Yes, and other things that were important in the department she did show me.

Q. And your position, from working with Gladys Witter, were you in the position to observe the type of a worker that Mrs. Witter was? A. Yes, I did.

Q. What type of worker was she? A. She was a very willing worker.

Q. Would you say she was a good worker? A. Yes, I do—yes, I would.

Q. On any occasions did you ever complain to Mr. Rumble about Mrs. Witter? A. No, I never did.

Q. Did you ever complain to Mr. Brancato about Mrs. Witter? A. No sir, I never did.

Q. Mr. Rumble ever talk to you about the union? A. Yes sir, he did.

Q. Do you recall when? A. Well, I don't know the exact time, but I know just the incident that happened.

Q. Well, do you recall that the National Labor Relations

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Board election was held in the store— A. Yes, I do.

Q. To refresh your recollection that was held on August the 17th, 1954. Now, with relation to that date, can you tell us approximately when Mr. Rumble talked to you about the union? A. Well, it was before that.

Q. All right. Can you tell us how many days or weeks or months before that? A. No sir, I can't.

Q. Well, did there come a time in 1954, when you know that the union was petitioning the National Labor Relations Board for an election? A. Yes, I did.

Q. Now, was it around about that time—in other words, was it somewheres near the period—in the period of when you first heard that there was to be an election and the election itself, in between that period? A. Yes sir, I would say it was around in there some place.

Q. Now, where were you when Mr. Rumble talked to you? A. I went to his office for help.

Trial Examiner: What was the last there, Mrs. Marold, you went to his office for help?

The Witness: For help, for the coverage that I had, some book work that I had.

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Q. (By Mr. Cavers) Now, your hosiery department is down on the main floor, is that right? A. That is right.

Q. And is Mr. Rumble's office on the second floor? A.

On the third floor I guess you call it. First floor, mezzanine—

Q. There is a main floor in the store? A. Yes, then there is what you call a balcony,—

Q. There is what you call a balcony? A. That is right.

Q. And then above that balcony there is another floor and it was on the top floor, the third floor as you call it? A. That is right.

Q. Now, when you walked into Mr. Rumble's office on that day, was there anybody else in his office? A. No sir, there wasn't.

Q. When you walked in his office, what was the first thing that Mr. Rumble said to you? A. Well—

Mr. Dickson: Would you speak up, please, Mrs. Marold. I can't hear you.

A. (Cont'd) —he said something like this: "Did you join the union," or "What do you know about the union," or something to that effect.

Mr. Cavers: And what did you say?

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A. I didn't answer I don't believe.

Q. And what, if anything, else did he say? A. He said, "Do you mean to say they haven't asked you," and I said, "No, they didn't."

Q. Was there anything else said? A. No, that was all that was said.

Q. Now, would you tell us again what was your occasion for going to his office at that particular time? A. I had ordering to do, it was work on a coverage, a merchandise coverage that I needed help with.

Q. All right. Now, before you went up to Mr. Rumble's office, had you called him to tell him you were coming up or did you just go up? A. I believe I just went up.

Q. So he didn't know at the time you knew that you were coming?. A. That is right.

Q. Are you here today, Mrs. Marold, pursuant to a subpoena that was served on you by the National Labor Relations Board? A. Yes, I am.

Q. Now, did you ever see Mrs. Witter wear a union button in the store? A. Yes, sir, I did.

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Q. (By Mr. Cavers) Mrs. Marold, I show you what has been marked as General Counsel's Exhibit 12 and ask you if that looks like the button that Mrs. Witter wore? A. Yes, it does.

Q. Do you recall when she wore this, when you saw her wearing it? A. Yes, it was the day after the election.

Q. And where did she wear it on her person? A. In the lapel of her dress.

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Q. Has there been any new employees hired for your department since Mrs. Witter was let go? A. Not steady. I had extra help at Christmastime, but there

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wasn't anyone steady in that department.

Q. Other than that, there has been no one except the extra help that was brought in for the Christmas rush? A. That is right.

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CROSS EXAMINATION

Q. (By Mr. Dickson) You came up to see Mr. Rumble on this occasion and without any introduction or any previous discussion he started out by saying, "Did you join the union," is that right? A. Well, yes, he did. He said it rather jokingly, like he might have been talking about it to someone else, at least that is the way I took it.

Q. And you didn't answer? A. No sir, I didn't.

Q. Then, he said something to the effect, "do you mean to say they haven't asked you," is that right? A. That is right.

Q. Did you answer that? A. Yes, I did.

Q. What did you say? A. I said, "No, they didn't."

Q. Was there any further discussion? A. No sir, there wasn't.

Q. Did you understand by that there was any criticism or

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threat being implied against you as to whether you did or didn't join the union? A. No.

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Q. (By Mr. Dickson) Isn't it a fact, Mrs. Marold, that at one time, I am not sure just when last spring, perhaps Mrs. Witter got the sizes mixed up in your department on one occasion? A. No sir, it wasn't the sizes.

Q. Well, tell me what it was, I probably have it wrong. What happened? You probably know the incident. A. The occasion I think that you are referring to was when she ordered things down from the stockroom that did not have the tickets on them.

Q. Tell us about the tickets, why should they have tickets and what are those tickets? A. Well, that work is supposed to be done in the stock room and as I remember we were getting ready for a sale or company or something, and we had to have the department in

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shape and she ordered the things down from the stockroom saying that she would put the tickets on them because we needed the merchandise.

Q. Now, are those price tickets you are referring to? A. Yes, that is right.

Q. And does the merchandise have to have the price tickets on before it is sold? A. Yes, that is right.

Q. And is it the task of the stockroom or of the department to put them on ordinarily? A. The stockroom.

Q. So that that would be irregular, wouldn't it, to order them down without the tickets? A. Well, I guess it is done at times, but anyway it—that is what happened.

Q. Well, didn't you speak to Mr. Rumble about that? A. I talked to him about it because I didn't have the time to put them on and she was called away some place else at the time and she couldn't do it.

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BRUCE EDWARD SHOUDY a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

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Direct Examination:

Q. (By Mr. Cavers) Would you state your name and address, please. A. Bruce Edward Shoudy, 501 West Main Street, Endicott, New York.

Q. You are employed by Montgomery Ward? A. Yes.

Q. In their Binghamton, New York, store? A. Yes.

Trial Examiner: May I have the spelling?

Mr. Cavers: S-H-O-U-D-Y.

The Witness: Yes.

Q. (By Mr. Cavers) And it is Bruce E? A. Yes, B-R-U-C-E.

Q. What is your present position with Montgomery

Ward, Mr. Shoudy? A. I am head of the sporting goods department.

Q. How long have you been employed by Montgomery Ward? A. Since February 4, 1954.

Q. When you started in February of 1954, did you start as a department head? A. No sir, I didn't.

Q. When were you made—first made a department head, approximately? A. I would say along in the first of April.

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Q. Of '54? A. Yes.

Q. And was that in the sporting goods? A. No sir, it wasn't. That was Division 42, men's wear, clothes.

Q. And how long were you a department head of men's wear? A. Until the first of May.

Q. And then at that time were you made the head of sporting goods? A. Yes, sir.

Q. And you have been the head of sporting goods continuously since that time? A. Yes, sir.

Q. Do you know Mr. William Dino? A. Yes sir, he is my partner.

Q. He works with you in sporting goods? A. Yes, sir.

Q. And has he worked in sporting goods ever since with you, ever since you took over the department? A. I believe he came a week or two after I was there.

Q. Do you know Mr. Rumble, your store manager? A. Yes, sir.

Q. Did Mr. Rumble ever talk to you about the union? A. I believe he made casual mention of it.

Q. Do you recall the time the National Labor Relations Board

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conducted an election in the store? A. Yes, sir.

Q. When did he make this mention of it relative to the election that was held there? A. Previous to the election.

Q. Well, about how long before, approximately? A. Oh, a week or two.

Q. Where were you when he talked to you at that time? A. In sporting goods department.

Q. What did he say to you and what did you say to him?

Mr. Dickson: May I have the same objection?

Trial Examiner: Yes.

Mr. Dickson: Mr. Examiner, and the ruling will be the same?

Trial Examiner: The ruling will be the same.

Mr. Cavers: Just a minute, this conversation was with—

Mr. Dickson: I am sorry. I guess this is with Mr. Rumble, isn't it, rather than Mr. DuFour?

Mr. Cavers: Yes.

Mr. Dickson: I am sorry. I will withdraw the objection.

Mr. Cavers: Yes.

Q. (By Mr. Cavers) What did he say to you and what did you say to him? A. As I remember it, Mr. Dino and I were in the department and Mr. Rumble walked up to us and in a casual manner said

to us, "What do you hear about the union?" And I turned to him and I said, "Not much," and he said, "Well, have you been to any meetings?" I said, "Oh, one or two. Why?" And he just asked me, he says, "Oh, I was just curious as to what went on." I said, "We just talked about the good and bad working conditions of the store and what the union can do to help them." Then he says, "Well, do you think they can do enough for you to join?" I says, "I haven't decided." And that ended it.

Q. Do you know Mr. Leonard DuFour? A. Yes, sir.

Q. Did Mr. DuFour's department—is sporting goods down in the basement? A. Yes, it is.

Q. Where is your department located relative to Mr. DuFour's department? A. Right next to it.

Q. Did you ever hear Mr. DuFour scold or reprimand any of the employees in his appliance department? A. His own men, yes.

Q. That is what I mean. How do you happen to know that he did? A. Well, working next to him it isn't hard to hear him.

Q. On these occasions would he reprimand them in a moderate voice or in a loud voice?

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A. It all depends on how disgusted with them he was.

Q. Well, did he ever reprimand them in a very loud voice? A. Yes, sir.

Q. Did he ever reprimand them in such a loud voice that you could describe it as yelling at them? A. You might say that, yes.

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IRENE GLADYS WITTER resumed the stand as a witness by and on behalf of the General Counsel, having been previously sworn, was examined

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and testified further as follows:

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Further Re-cross Examination:

Q. (By Mr. Dickson) Mrs. Witter, while you were employed at Ward's, you punched a time clock, did you not? A. That is correct.

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Q. And how many times a day would you punch that? A. You punch it when you went in in the morning, when you went out to lunch and when you came back from lunch, and when you went home at night, and on Thursday you punched out for your supper hour and back in and then again at 9:00 o'clock when you went out.

Q. Now, how long did you keep a cycle time card? A. That was kept from Wednesday—Wednesday night was your last—the end of the period—Thursday morning you were given a new card, or Wednesday afternoon they put the new card in the rack, Wednesday afternoon.

Q. So it would last for one week, is that right? A. That is correct.

Q. And each week would end Wednesday night? A. Yes, sir.

Q. Now, when you came in to punch in your card, where did you find it? A. In the time card—in the time card rack in the hall.

Q. And thereby—nearby there was a time clock, is that right? A. There was a time clock right by it.

Q. And in punching in, you would take the card out of the rack and insert it in the clock to get the time and then put it back in the rack, is that right? A. That is correct.

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Q. Now, did you have occasion to sign your time card at any time? A. Yes, you signed your time card after you received your pay on Thursday night at 4:00 P. M.

Q. As a receipt for your pay, is that right? A. That is right.

Mr. Dickson: Mr. Reporter, would you mark as Respondent's Exhibits for identification, these time cards respectively, Respondent's Exhibit 6, Exhibit

7, Exhibit 8, Exhibit 9, Exhibit 10, Exhibit 11, Exhibit 12, Exhibit 13.

(Thereupon, the documents above-referred to were marked Respondent's Exhibits 6 thru 13 inclusive for identification.)

Q. (By Mr. Dickson) Mrs. Witter, I will show you some documents purporting to be time cards which have been marked Respondent's Exhibits 6, 7, 8, 9, 10, 11, 12 and 13 for identification and ask you if those were your time cards? A. That is correct, they are.

Q. Now, at the bottom of each of them, there appears a signature opposite the words "employee sign here". Would you look at those signatures and answer whether they are in your writing? A. They are.

Q. Answer whether they are in your writing, I mean. A. Yes sir, they are.

Q. Now, are those cards in the same condition as they were

when you signed for your pay? A. You mean you expect me to recall way back in October of '53 whether everything is on that time card as it was then. I couldn't tell you.

Q. You can't tell? A. I don't have a whole year's memory.

Q. Don't argue with me. A. I am not. I am just telling you what I think.

Q. Now, when you came to pick up your time card out of the rack, you would have to look for your name, wouldn't you? A. That is correct.

Q. And were they kept in alphabetical order? A. Well, unless somebody turned around and went in and signed their card and didn't put it back in the right place. Most usually we went by the number, you know, it is up there

108, my number would be 108 in the time clock, and lots of times you would just reach up for 108, you would get used to it after awhile.

Q. That would vary by the number of employees, is that correct? A. That is right.

Q. So that sometimes Witter would be 108 and sometimes 118, is that right? A. That is right, and it has been way down below that.

Q. Now, on each of these I believe you will see the word

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opposite "department" "extra", can you state whether or not that word was on there? A. That is right, that is what it says on there.

Q. What was an extra? A. Well, to my knowledge, an extra was one that came on Thursdays and Saturdays, or just came to fill in special times when they needed help.

Q. Somebody who was not a regular employee? A. That is right, somebody who wasn't a regular.

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JOSEPH M. McGRAW a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Cavers) Will you state your name and address, please. A. Joseph M. McGraw, 3 Mathers Street, Binghamton, New York.

Q. 3 Mathers, M-A-T-H-E-R-S Street? A. That is right.

Q. Are you here today pursuant to a subpoena served on you by the National Labor Relations Board? A. Right.

Q. Are you employed at the present time, Mr. McGraw? A. I am.

Q. By whom? A. Montgomery Ward.

Q. How long have you worked for Montgomery Ward?

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A. About eight and a half years.

Q. How long have you worked in the Binghamton store? A. Four and a half.

Q. You came here around 1954—1951 then? A. 1950, it was.

Q. 1950. What was your job when you first— A. August 26th.

Q. What was your job when you first came here? A. Paint department.

Q. What department is that? A. Division 75.

Q. And were you the department head of the paint department? A. That is right.

Q. Where did you work before you worked in Binghamton? A. Jamaica store, New York City.

Q. New York City. What department did you have down in the Jamaica store? A. I had the hardware division, Division 84 in Jamaica.

Q. Now, do you know Frank Felker? A. Yes, I do.

Q. He worked in Department 87? A. Farm supplies.

Q. Farm supplies. Is that near paints? A. That is right, right next to it.

Q. Did Mrs. Witter, do you know Mrs. Gladys Witter?

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A. Yes, I do.

Q. Did Mrs. Witter ever work in your department? A. Yes, she used to help in the busy season—oh, in April and May. That is when I first went there in '50 and '51

Q. And did she also upon occasion work in your department during lunch hours or times like that? A. Yes, she has.

Q. And did this occur also during 1954? A. '54? No.

Q. She didn't work for you in '54? A. Not that I recall.

Q. Do you recall when Mr. Felker was released? A. Yes, I do.

Q. Who took over his department? A. Well, I was—I was told to overlook it, oversee it, in other words. I was never officially given the title of department head, but I suppose overlooking and overseeing a department would be the department head?

Q. Who told you to oversee it? A. Mr. Rumble.

Q. When did he tell you that? A. Oh, sometime in September.

Q. Well, can you tell us in your own words what he said? A. Well, he asked me to take over 87, that is to overlook it.

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He would get someone to help me and he asked whether I would prefer a girl to do the work or a fellow, and I told him that naturally I would prefer a man because in 87 there is a lot of heavy equipment to move, and it would be better to have a man there because I have plenty to do moving paint around, so consequently, why, he hired Mr. McHugh, Frank McHugh.

Q. When did Mr. McHugh come to work there? A. I believe he started in—the last week in September.

Q. The last week in September? A. I believe, yes.

Q. And he—has he worked there continuously since that time? A. Yes, he has.

Mr. Cayers: Mr. Dickson, do you know whether or not the company now has the information available with respect to the salary of Mr. McHugh?

Mr. Dickson: Do you have that information, Mr. Rumble?

Mr. Rumble: Yes.

Mr. Dickson: Would you like to have Mr. Rumble just state it?

Mr. Cavers: Yes.

Mr. Rumble: It is $50 a week.

Mr. Cavers: Is that what he was hired at?

Mr. Rumble: Yes.

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Mr. Cavers: And did you also—did you say he also got the 4% commission on sales in excess of $600?

Mr. Rumble: Yes.

Mr. Cavers: Thank you.

Q. (By Mr. Cavers) Now, in 1954, before Mr. Felker was let go, did you work in his department at all? A. Only when he was out for lunch.

Q. And then when you were out for lunch, he would work over in your department? A. He would take care of it, yes.

Q. Now, did you do that, the two of you, he worked in your department during 1954? A. That is right.

Q. Up until the time he was— A. Let go.

Q. (Cont'd) —let go. Now, with respect to the cleanliness of Mr. Felker's department, what would you say whether it was clean or dirty? A. Well, I don't think it was any dirtier than some of the other departments in the basement. It was a type of department that was a little hard to keep clean. I mean, he had to tackle merchandise that collected dust and dirt, but it wouldn't be any dirtier than plumbing and auto accessories and hardware.

Q. Now, you worked in the store down in Jamaica, New York?

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A. Jamaica.

Q. While you worked in that Jamaica, New York, store, did you ever see the farm equipment department in that store? A. Well, they only handled garden tractors in the Jamaica store. We didn't carry a complete line of farm supplies, so actually they didn't have much of a farm department.

Q. Well, did the—were there other departments that were as dirty or dirtier than Mr. Felker's department? A. Well, I would say in the basement there is probably—there would be four departments that are hard to keep clean.

Q. What are those departments? A. Hardware, plumbing, auto accessories and farm supplies.

Q. Was his any dirtier than any of the others? A. No, I wouldn't say it was any dirtier.

Q. Now, when you went after Mr. Rumble told you to oversee the farm equipment department, did you have to take any inventory of it? A. No.

Q. But, by working in it you knew in a general way, let's say, the stock that you had? A. I had a fair idea.

Q. A fair idea of the stock. Now, is the company now stocking farm equipment heavier than they did, say, when you took it over? A. I believe by the time the orders that we have been placing

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come in probably that they will have a higher inventory than what they have been carrying. See, some of it—some of this coverage which deals with tractors and supplies and so forth has already been made, and I think we will

have a much better stock when all that supplies come in which will be probably in February.

Q. These supplies and so forth will come in in February of '55? A. Usually the shipping date would be sometime in February.

Q. Yes. Now, when was this equipment or merchandise ordered, do you know? A. Well, it was ordered in November and December.

Q. Of '54? A. I think there is some of it ordered in the first part of January.

Q. Do you know what kind of a worker Mr. Felker was? A. Well, I think he was a very good salesman. In fact, I think he was the best in the store.

Mr. Cavers: No further questions.

CROSS EXAMINATION:

Q. (By Mr. Dickson) Mr. McGraw, you were asked whether Mr. Felker was a good worker and you said he was a good salesman. I would like to have you elaborate a bit if your will on the physical part of it. In other words, from time to time you have to re-lay the departments don't you?

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A. Yes, sir.

Q. And 87, for example, that is contracted in the fall and replaced by toys, isn't that right? A. Correct.

Q. And at that time, would you have to move counters and that kind of thing? A. Yes, you would.

Q. Now, in doing that type of work, how was Mr. Felker? A. I would say Mr. Felker—oh, probably did about what they expected of him.

Q. Well, you mean expected of a man 62 or just what do you mean by that? A. No, he would eventually get the work done.

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Q. Now, do you— had you acquired any knowledge since you had this supervision of Division 87 of its condition with regard to old merchandise, what is called B and X merchandise? A. Yes, I do.

Q. Can you state in terms of percentages or any other way that you can state how much of the inventory at the time you took it over there— you took it over was in that type of merchandise? A. No, I couldn't give you a percentage or figure, but I know we got our share of it.

Q. Well, was it heavy or ordinary or light in that regard? A. It is fairly heavy.

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Q. When did you first learn that you were to have charge of Division 87? A. That was sometime in either the latter part of August or the first part of September.

Q. And who talked to you about it? A. Mr. Rumble.

Q. Were you called up to his office? A. Yes.

Q. And tell us what was said at that time? A. Well, he told me that I was to overlook and oversee Division 87, and that also meant toys since we were coming

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into the toy season. Of course, at no increase in money, salary, and he asked me if I would sooner have that he would get a girl at $35 a week or a man at $50, and I told him that I would prefer a man at $50 a week.

Q. And he accepted your recommendation in that respect, did he? A. He said he guessed that I was right, yes.

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Q. So there are now two people working in these two departments and Mr. McHugh really is in place of Mr. Felker, is that right? A. That is right.

Q. Mr. McHugh being a salesman and Mr. Felker was a department head, is that the effect of it? A. Well, Mr. McHugh just took Mr. Felker's place.

Q. Yes. But, I mean, he doesn't have any department head title? A. No.

Q. In fact, he works for you, I believe, under your general supervision? A. Well, with that arrangement that I was to oversee it and he was to help me do the work, yes.

Q. And can you state at this time how long a period of time elapsed between the time Mr. Felker was released and the time Mr. McHugh was hired, put in that position? A. It seemed a short period of time, I don't believe it was over a couple of weeks, I don't believe.

Q. Do you recall the exact dates? A. Well, Mr. McHugh—see, I took a week's vacation the first full week in October and Mr. McHugh started working the Thursday before I left on vacation.

Q. That would be

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A. Because I had three days to show him what to do before I left on my vacation.

Q. So that would be the end of September, is that right? A. Yes, that is right.

Mr. Cavers: Mr. Dickson, what do the company's records show with respect to when Mr. McHugh was hired?

Mr. Dickson: We can produce that.

Mr. Cavers: I will certainly stipulate whatever the date is.

Mr. Dickson: I think it might be well to get that in the record. I will check it.

Mr. Cavers: Very well.

Trial Examiner: Now, Mr. Felker left the employ of the company on August 23, 1954; who performed his duties between the time he left and the time Mr. McHugh was hired, do you know that?

The Witness: I was the only one there then.

Trial Examiner: You were the only one in the two departments?

The Witness: That is right.

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Mr. Dickson: As far as we know, that is correct. It may be stipulated as being correct to the best of our knowledge.

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Mr. Cavers: I intended to call as a witness Mr. Buchholzer, but Counsel for the Respondent has graciously consented to stipulate that on the occasion as related by Mrs. Witter when she was talking to Mr. Buchholzer he saw they saw Mr. Rumble and Mr. Buchholzer went over and talked to him. Now, Mr. Rumble tells me that he remembers the occasion in which Mrs. Witter was talking to Buchholzer and Buchholzer then came over and introduced himself to Mr. Rumble. Is that agreeable.

Mr. Dickson: That is correct. It may be so stipulated.

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Mr. Dickson: For the purposes of making the record clear with respect to Respondent's motion based upon the absence of the General Counsel, it is stipulated between Counsel present that the General Counsel of the National Labor Relations Board held office up to the close of business on December 20, 1954, and that since that date the office of General Counsel of the National Labor Relations Board has been vacant. Is that correct?

Mr. Cavers: And since that time there has been no General Counsel.

Mr. Dickson: All right, I accept the amendment.

Trial Examiner: You accept the amendment?

Mr. Dickson: All right. I accept the amendment. It may be so stipulated.

Mr. Cavers: Yes.

Mr. Plone: So stipulated.

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ROBERT ELLIOTT, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination:

Q. (By Mr. Dickson) State your name, please. A. Robert Elliott, E-L-L-I-O-T-T.

Q. Where do you live, Mr. Elliott? A. There is a question about that right now. I guess, Plainfield, New Jersey.

Q. By whom are you employed? A. Montgomery Ward.

Q. What is your position? A. Manager.

Q. Store manager. A. Today, yes.

Q. How long have you been with the company? A. Approximately six years.

Q. And have you previously held a position in the regional office? A. Yes, two of them.

Q. What positions did you hold in the Regional Office? A. I was Regional Personnel Manager and then Regional Operating Manager.

Q. And were both of those in Region 1? A. Yes.

Q. For what period of time were you Regional Personnel Manager? A. Approximately six months.

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Q. Well, state the dates, if you can. A. January through June of '54.

Q. And for what period of time were you Regional Operating Manager? A. Through—July through January '55—July '54 to January '55.

Q. Now, will you state very briefly the organization of Montgomery Ward as far as the regional organization in Region 1 is concerned. A. Well, it has at its head a regional manager, and he has a regional staff of personnel manager, merchandise manager and operating manager, and that then under the regional staff would go to the field level with district manager and under district manager then the store manager.

Q. Now, the regional office located in New York City, is it not? A. That is right.

Q. And how many district managers are there in Region 1? A. Six.

Q. During the year 1954, what was the number of the

district in which the Binghamton, New York, store was located? A. Two.

Q. And who was district manager of that district? A. Mr. Levengood.

Q. Where did Mr. Levengood have his headquarters?

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A. Fulton, New York.

Q. And how many stores did he supervise, if you know? A. Approximately 20 or 21. The districts vary by two or three stores. We are usually from 18 to 21 or 22.

Q. Will you state briefly what your duties were as operating manager of Region 1? A. Well, I would say the operating manager is responsible for the control of profit on a regional basis through the district manager, working through the district managers.

Q. And in connection with his duties, does he exercise any supervision over the payrolls in the various stores in the region? A. Very much so.

Q. Does he obtain any reports from the stores with regard to payrolls? A. Yes, we get a weekly payroll report from every store.

Q. And does the operating manager issue any quotas or any other instructions of any kind with regard to allowable payrolls in the stores? A. Yes, we establish the basic organization for each store in addition to the percentage for extra allowance in each store.

Q. Now, what are the duties of the district manager in a general way? A. District manager is responsible for his particular district

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for each store in his district for the supervision toward the ultimate goal of obtaining maximum sales and profit throughout his district under the supervision of the regional staff.

* * *

Q. I show you a document which has been marked Respondent's Exhibit 14 for identification and ask you if you can identify that document consisting of five pages. A. Yes, this is the basic organization chart for Binghamton, New York.

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Q. (By Mr. Dickson) Now, looking at this report which you have before you, identified as Respondent's Exhibit 14, can you state from what file that document comes?

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A. This particular document I believe comes out of the regional office. Well, I know it does because it has my markings on it.

Q. It bears on the second page of the sheet which appears to be the first page that is dated, the second page of the exhibit, I mean to say, in typing at the top the date 12-26-53; can you state whether or not it was prepared on or about that date? A. Yes, it would have been prepared that date.

Q. And is that prepared in the regional office? A. Yes.

Q. And state whether or not that is prepared under the supervision of the Regional Operating Manager. A. It is prepared by the operating department.

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Q. Now, if I understand you correctly then, the second page of Exhibit 14 would actually be the first page of the December 26th, 1953 report as it was originally made out, is that correct?

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A. That is correct.

Q. Now, you see on that second page columns entitled "Basic Summaries", "Account", "Sales", "Wages",

"Sales", "Wages"; would you read across there and explain the significance of the figures in each of those columns. A. The first column is merely a listing of the titles as we break down the payroll, non-commission, commission, management, functional payroll, different distinctions of accounts. The second column is the actual number of that account. The third column—

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is your sales column. This signifies the basic sales that are anticipated for each one in each one of these classifications.

* * *

Q. Well, for example, on the first line opposite selling A, there is under the first sales column the figure seven thousand twenty-five, is that a sales figure for a certain

period of time? A. That figure would hold good for a six-month period or until the basic was reviewed again.

* * *

Trial Examiner: Is that the number of sales that is estimated?

The Witness: No, it is not the estimated sales.

Trial Examiner: Or just an arbitrary figure?

The Witness: No, it is not an arbitrary figure. It is basic sales depending upon the number of people that we have in that particular classification. The person by department and by salary has a certain basic sales. Those basic sales represent in this particular case, the seven thousand twenty-five, the basic sales are the number of people in the group A selling department.

Trial Examiner: That would be seven thousand twenty-five basic sales?

The Witness: That is right, for Group A.

Trial Examiner: Of merchandise, individual sales?

The Witness: That is right.

Q. (By Mr. Dickson) That is a dollar figure, is it not? A. Yes.

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Q. (By Mr. Dickson) Well, is that in the nature of a quota then? A. In the nature of such, yes.

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Q. And would it represent—let me ask you, and you correct me if I am wrong—would it represent a basic sales figure or quota for each person in that group multiplied by the number of persons? A. That is correct.

Q. And that would be the way it would be arrived at? A. That is right.

Q. In other words, what the people who make this up feel is necessary for that group to pay for itself, is that right? A. That is right.

Q. All right. Now, we go on to the next column on the second page of Exhibit 14 and we see Wages $702.25, what would that be? A. That is the amount of wages that are—that are basic employees in that Group A division.

Q. In other words, we have a certain number of people who are employed in that division?

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A. In that Group A departments.

Q. Departments. And they earn certain wages each one? A. That is right.

Q. And this is the total of those? A. That is the total of those, that is correct.

Q. For what period of time? A. For the six months.

Q. For the six months. A. Starting of the six month that would vary by the increases, change in personnel at any time during the six-month period. But, this is the start of the six-month period.

Q. Well, $702.25 doesn't represent the wages you are going to pay those people for six months, does it? A. No.

Q. For what period of time? A. For the week.

Q. For the week at the beginning of the six-month period? A. That is right.

Q. And your sales figure that we have referred to of $7,025, is that also a weekly figure? A. That is right.

Q. Now, we come to the next column which is likewise entitled "Sales" and says $7,025, what is that? A. This is the revised figure after the basic was reviewed,

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revised sales figure.

Q. Now, reviewed from what point of view? A. Reviewed by myself and the district manager.

Q. With an idea as to whether it should be increased or decreased? A. That is correct.

Q. For the purpose of determining what would be self-supporting, is that the criteria what is necessary to sell in order to support a—support that group? A. That is right.

Q. And since the figure is the same, I take it in this instance it was decided that no change was necessary, is that right? A. In basic sales.

Q. In basic sales. Now, we come to the last column opposite Selling A on the second page of Exhibit 14 and we find a figure $696.25, what is that? A. That is the revised wage figure.

Q. It is somewhat—that is applicable to the last column of sales before that, isn't it, is that right? A. Before I could make an actual statement that that is a revised figure this possibly isn't the first—the new basic as of the first of the month. You have a new one—

Q. Well— A. The copy of—

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Q. By the "new one" you mean the July, 1954? A. The copy of the July, '54 basic from the Binghamton store.

Q. Yes. A. In other words, this is a work copy of mine that I use in the office.

Q. I show you a document which has been marked Respondent's Exhibit 15 for identification purporting to be a similar statement bearing date 7-31-54, is that the document you referred to? A. Yes, in this case it is the revised figure.

Q. Now, by the revised figure does that represent a quota figure for weekly sales expense, salary, in that group, is that what it is? A. Wages. It represents wages for the week as established by my office through the district manager.

Q. Then— A. In the Group A departments.

Q. Now, referring to Exhibit 14 that figure in the last column of $696.25 is slightly under the figure in the previous Wages column of $702.25. You determine it upon a reduction, is that the effect of it? A. It was reduced prior to coming in to us and we maintained it the same. We made no changes in the soft line group.

Q. I see.

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A. In other words, basic changes in the department sent in by the Binghamton store would have reduced that figure to that amount.

Q. I see. It was the Binghamton store then that suggested a reduced figure and you reviewed it and accepted it? A. By the change in personnel over the previous six months.

Q. All right. Now, then looking at the second page again of this Exhibit 14 we have been talking about the line described as Selling A under non-commission, and you have, I think, indicated in a general way what is meant by "A", that is soft line merchandise, is that right? A. That is correct.

Q. And why is that placed under non-commission? What is the significance of that? A. The divisions under that—under Group A are what we term a personal production division and have a quota. There is commission paid for sales by the individual over and above the established quota.

Q. Now, further down there is a group headed "Commission", what is that? A. Commission Division is the division where we pay a direct commission either by the use of a draw or on a straight commission basis and entails such departments as appliances, plumbing, and so forth.

Q. And in those departments there is no quota established,

is that right? A. That is right.

Q. Now, in which—can you state at that time in which of those groups, non-commission or commission, Division 75 fell? A. Non-commission.

Q. And in which of those two groups, Division 87 fell? A. Non-commission. This would be true throughout the region in any case.

Q. In other words, it would be uniform in all stores in the region, is that right? A. That is right.

Q. Now, under each of those categories, non-commission and commission, there is also a line described as Selling B, what is the significance—what is that designated—A. "B" lines consist of furniture, appliances and draperies and toys. I believe that is all of them.

Q. And then there is also another line under each of those categories, commission and non-commission, described as Selling C. What does that designate? A. It would be designated on the retail industry to us as we know it as hard lines.

Q. And in general gave a few illustrations. A. Hardware, farm store—or farm equipment, paint.

Q. Would Divisions 75 and 87 both fall under Group C? A. That is correct.

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Q. And I believe you said under the non-commission category? A. That is correct.

Q. So that to take this particular example on Respondent's Exhibit 14 the figures that would include Division 75 and 87 would be in the first sales column $3,650, is that right? A. That is right.

Q. And then the first Wages column $462? A. That is right.

Q. The second Sales column, the revised Sales Column $3,650, is that right? A. That is right.

Q. And then the revised Wages column $463? A. That is right.

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Q. Now, if I understand you correctly then, the first column of Sales and the first column of Wages represent the actual—at the time the report was prepared on December 26, 1953? A. That is right.

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Q. (By Mr. Dickson) During what period of time or at what time would the figures be entered in the second and sales—second sales and second wages columns? A. At any time during a six-month period. They would be changed periodically.

Q. Now, with reference to the specific exhibit, Respondent's Exhibit 14, which bears the date 12-26-53; during what six months period would that change—would those changes be made? A. December 26th through July 31st.

Q. December 26th of what year?

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A. Of '53.

Q. To July 31 of '54? A. That is correct.

Q. So that those represent changes during the six months following the date entered at the top of this report, is that right? A. That is right.

Q. Now, how are those changes made in the second Sales column, in the second Wages column, explain that—explain the mechanics. A. Any change in the store such as name change, if a girl would get married and change her name, such as an increase in wages recommended by the store manager, any change like that is reported on a basic change notice as we term it in Ward's. The change notice is submitted to the district manager for his approval, approved—the district manager then forwards a copy of that change notice, approved copy I should say to my—or to the operating office in New York. The girls in the operating office then proceed to make the changes on the basic organization changing the individual involved and the total figures on the front page.

Q. So that would explain why the figures in this last column of Wages show evidence of erasures from time to time, is that right? A. That is correct.

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Q. They were changed periodically during six months? A. Yes, sir.

Q. Now, what is the fact with regard to whether or not those basic change notices insofar as they affected wages would have to receive approval higher than the store manager? Would they or wouldn't they? A. In all cases they would.

Q. Now, take the Binghamton store specifically, the proposed change would be forwarded by the store manager on a basic change notice, would it? A. That is correct.

Q. And he would send it at the end of the period—he would send it at the period of time that we are discussing about to what person? A. The district manager.

Q. And that was who? A. Mr. Levengood.

Q. Then Mr. Levengood would do what with it? A. He would either approve or disapprove it.

Q. Well, let's suppose that he disapproved it, what would he do? A. He would forward it back to the store with the reasons why he disapproved it.

Q. In that case, he wouldn't send it on to the regional office, is that right?

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A. That is correct.

Q. I suppose the store manager would be at liberty to try to convince him he was wrong, wouldn't he? A. Most assuredly.

Q. Suppose he approved it then, what would he do? A. If he approved it, then he would forward two copies back to the store manager approved one copy to the regional operating office, and retain one copy in his own file.

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Q. Well, can the store manager in any instance make a change in the wages of the people listed on this document, Respondent's Exhibit 14, without the approval of the district manager? A. No.

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Q. Now, as to the entry on this document, Respondent's Exhibit 14, that would be made in the regional office? A. That is right.

Q. In the case of this document, wouldn't it? A. That is correct.

Q. Then I notice in the next group at the left-hand corner, lower left-hand corner, merchandise installation, there is a name "Vosbury, D." which is stricken out in red pencil on the original of this document. Explain the significance of that. A. It means that when reviewing this basic organization with Mr. Levengood in my office when I was in New York, I discontinued the use of the particular half-time contract installation clerk at $17.50 in this store and issued

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instructions to discontinue her from the payroll.

Q. And were your notations on that characteristically made in red pencil? A. Yes, they were.

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Q. Now, turning over to the fourth page of Respondent's Exhibit 14 near the bottom of the page there is the name J. McGraw, and there are some red notations opposite that; will you explain the significance of those notations? A. Well, in this particular case when I looked at

the basic sales, the projected average weekly sales, I should say, for Department 87 as it is shown on this basic on the following

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page, that is Exhibit 14, 87, the basic sales for the particular department, I should say, average weekly sales for the department, we estimated or projected to be $108 per week.

Q. Let's hesitate just a minute on that so we will be sure we get it right. We are now looking at the last page in Respondent's Exhibit 14; is that right? A. That is right, yes, sir.

Q. And in the first column under division is the number 87, that indicates merchandise, Division 87? A. That is correct.

Q. And opposite the name Felker, F. A. Is his name and department.

Q. And then the account, that would be the account to which his wages are charged? A. That is correct.

Q. And then wages $70, that is what— A. That is the amount of money he makes per week.

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Q. (By Mr. Dickson) We have to refer between the pages. Now, opposite Mr. Felker then under Basic Sales appears $400;

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will you state again the significance of that figure? A. That is what the company—we as the company feel he should sell each week.

Q. In order to earn his expenses, is that right? A. That is correct.

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Q. (By Mr. Dickson) And under Personal Production Plan there is the number four, can you state what that is? A. That figure designates the amount of commission he will earn over and above his established quota.

Q. Does that mean four per cent? A. Four per cent that is correct.

Q. Then under average weekly sales there appears in typing opposite Mr. Felker's name, five hundred seventy seven, and that is stricken out and one hundred eight written above in

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pencil, what is the significance of that? A. This particular column of the report is the projected sales for the following period, in this case July through December, which we anticipate that that particular department will do based on his past trend, based on the previous year, and the previous trend, I should say.

Q. Now, let me—I will ask you a few more questions maybe we will develop that a little. That is the weekly sales, that figure of $108? A. That is correct.

Q. Now, on the final column, the column heading is stricken out and is written in estimated July December 1954, that is the six months' estimate, is it? A. That is right. Well, July through December, six months.

Q. And in this case $46,165 was stricken out and $4,300 substituted, what is the significance of that? A. Well the $46,165 was the previous yearly sales, the estimate for a year.

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Q. So that at the time, is it correct to state, that at the time this report was first made up on December 20, 195[illegible] you projected Mr. Felker's sales in Division 87 at [illegible] $46,000, is that right? A. That is right.

Q. And then you revised that, you made corrections on this preparatory to the next report and you reduced it to a figure for six months of $4,300? A. For the fall six months that is right.

Q. That would be the fall of '54, right? A. That is right.

Q. Now, bearing those facts in mind, would you turn back to the preceding page opposite J. McGraw and explain the significance of the red pencil line—red penciled notations that are made around Mr. McGraw's name.

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A. We combined Division 75 and Division 87 and added to the basic list a half time reserve at $20 a week, basic organization, I should say.

Q. Now, prior to the decision to make this combination you had two employees, didn't you? A. Yes, sir.

Q. Mr. McGraw and Mr. Folker. And Mr. McGraw drew $60 a week and Folker drew $70 a week, is that right? A. That is correct.

Q. Now, after this change had been made, how many people were you authorized to have? A. Two departments.

Q. Or was the store manager— A. Two departments, one and a half.

Q. The two divisions were combined into one department? A. That is right.

Q. And one and a half people? A. That is correct.

Q. And how much was authorized for the department head? A. $60.

Q. And how much was authorized for his assistant? A. $20.

Q. $20 for half time, is that right? A. That is correct.

Q. Now, in striking out the name of Folker and leaving

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the name of McGraw, were you making a selection between Mr. McGraw and Mr. Felker or not? A. I was not. I did not know either Mr. McGraw or Mr. Felker, and still do not have—have never met them.

Q. Were you making a decision with regard to the positions specified there, was that the significance of it? A. That is correct.

Q. Regardless of what individuals happened to hold it? A. That is right.

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Trial Examiner: Where does it show any change then in the basic sheet here on Exhibit 14 with respect to the toy department which was also under Mr. Felker's control?

The Witness: As far as we were concerned in New York the toy department wasn't under his control.

Trial Examiner: What was it?

The Witness: Pardon?

Trial Examiner: I say, where was it?

The Witness: It was under Mr. Shoudy in Division 60. As far as this basic list is concerned.

Trial Examiner: All right. Go ahead. I will have to admit that I am a little bit lost.

The Witness: Well, if I can make it any clearer I would be happy.

Trial Examiner: I just want to understand your method of operation. Here is a man who had two departments, and if I

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get the import of your testimony now in reviewing your basic salary structure, your basic organization sheets here, without regard to the one department at all, disregarding the farm equipment department, you decided to get rid of his job and give half a job, a lower-rated job to Mr. McGraw who I assume took supervision of the farm equipment department. What happened to the toy department?

The Witness: The toy department was under according to as far as we're concerned in New York was under Mr. Shoudy, and it is so listed on this particular report. 48 is the toy department.

Trial Examiner: Mr. Rumble has told us and Mr. Felker has told us and Mr. McGraw has told us that Mr. Felker was in charge of the toy and farm equipment department.

The Witness: Well, that assignment would have been made at the store level.

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Q. (By Mr. Dickson) Taking Respondent's Exhibit 14 which was prepared as of December 26, 1953, initially how much sales do you project for the toy department there? A. The toy department is combined in this case with Division 60, we projected $1,213.

Q. Division 60 is sporting goods, isn't it? A. Sporting goods, that is right.

Q. So that would be the combined sales of the sporting goods

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and toy department? A. That is correct.

Q. For the six months commencing in December, 1953, based on your experience would toys be an important part

of that sales figure? A. Toys are only important in October, November and December, no other time during the year.

Q. And those months are not included in this period, are they, as initially prepared? A. In July through December.

Q. Well, I am talking about the typed portion of Respondent's Exhibit 14? A. No, they would not be.

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Q. (By Mr. Dickson) The pencilled figures on Respondent's Exhibit 14, however, are the projection for the fall, aren't they? A. That is correct.

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Q. (By Mr. Dickson) Mr. Elliott, do you prepare the estimate of future sales? Do you personally prepare the estimates of future sales that are included in this report? A. No, sir.

Q. Where do they originate? A. They originate in the inventory control office, regional inventory control office.

Q. Is that an accounting office? A. In a sense, yes.

Q. And that is in New York City, is it? A. That is correct.

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Q. Now, looking at Respondent's Exhibit 14 and 15, where the changes appearing in handwriting on Respondent's Exhibit 14 in general, were they carried forward into the typed portion of Respondent's Exhibit 15? A. Yes.

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Q. So to take a specific instance on the second from the last line—from the last page of Respondent's Exhibit 15

appears the name of J. McGraw and opposite that 75-87; that represents the combination that you and Mr. Levengood decided on, is that right? A. That is correct.

Q. Now, do you have any specific recollection, Mr. Elliott,

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of the discussion between yourself and Mr. Levengood, if any, with reference to the combination of those two departments, 75 and 87, in the Binghamton store?

Mr. Plone: Well, Mr. Hearing Officer, I must object to that as being clearly hearsay and outside of the general permissive examination allowed of this witness, his conversation with someone else within the confines of their office.

Trial Examiner: No, I think I will permit this. I would like to hear the answer.

Mr. Dickson: Do you remember the question?

The Witness: No, let me hear the question.

Mr. Dickson: Would you read it back, Mr. Reporter?

(Question read.)

A. There is one point I remember and that is that Levengood wanted me to keep the 87 department on.

Q. (By Mr. Dickson) As a separate department? A. As a separate department.

Q. Yes. A. (Cont'd) —And I told him that I couldn't see it based on the sales and what his reasoning behind it—what was his reasoning behind it. In other words, it should be remembered that each one of these changes, each person on this list is discussed by he and I during this particular meeting. This is true of all stores in the region with each individual district manager and they, let me say, may be

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on the defense, and I am on the offense because it is my attempt to cut the payroll and bring it in line with the region, and it is theirs to make sure that they are adequately staffed in their stores, and as I recall he didn't want to take this job off because of the space involved and so forth in the store, but based on sales I couldn't see any alternative but to take it off. However, he did talk me into maintaining the half-time person on a basic.

* * *

Q. (By Mr. Dickson) You have mentioned space as one of the considerations that influenced you in determining how many people were needed in Divisions 75 and 87 of the Binghamton store, would you elaborate on that as to how you would space—how space would have a bearing on it? A. Well, we feel that we have to have adequate floor coverage to cover the floor, take care of customers, keep shoplifting at a minimum and so forth. This particular store is large physically for the volume of business that is done here, square footage of the store.

Q. And is that store, that is large physically in

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proportion to the volume of business, do you have more or less clerks in proportion to business than you would have in a smaller store? A. Well, we have to have more to adequately cover the floor.

Q. So that a customer doesn't have to go too far to find a clerk, is that the idea? A. Yes, that is one of the ideas behind it.

Q. Now, are there any other considerations that you remember at this time that influenced you in making this decision on Division 75 and 87 in the Binghamton store? A. No.

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Q. (By Mr. Dickson) Now, do you remember the date or approximate date on which the conversations took place between you and Mr. Levengood leading up to the preparation of Respondent's Exhibit 15? A. Well, we—it would be sometime in the latter part of July. I couldn't tell you the date.

Q. At the time that you had these conversations with

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Mr. Levengood, and thereafter until such time as Exhibit 15 was received in the Binghamton store, did you have any knowledge one way or the other as to whether Frank Felker was a member of any labor organization? A. None whatsoever.

Q. Do you—did you have any knowledge one way or the other as to whether Mr. McGraw in Division 75, Department Head, was or was not a member of any labor organization? A. No, sir.

Q. Did you have any knowledge in any way as to what employees of the Binghamton store were or were not members of any labor organization? A. No, sir.

Q. Did considerations of membership or non-membership in a labor organization have any bearing on the decisions reached by you and Mr. Levengood in the discussion you referred to? A. No, sir.

Q. Now, I will ask you whether or not similar reports to Respondent's Exhibits 14 and 15 were prepared for each store in Montgomery Ward's Region 1? A. Yes, sir.

Q. And did you personally participate in the discussions leading up to the preparation of those records or reports during the time that you held the operating man-

ager's position?

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A. Yes, sir.

Q. And the answers would be the same then as to each of the stores in the district where Binghamton was located, is that right? A. That is right.

Q. What district did you say that was? A. District 2.

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Q. Now, when you speak of eliminating a reserve, will you explain what you mean by that? A. A reserve is a full-time person that works as a second man in a department or as a third man, whatever it might be, an additional clerk in the department.

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Q. Have you made any check as to the number of stores in District 2 in which Division 75 or Division 87 was combined with any other division? A. Yes, I made that at the same time I reviewed this.

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Q. Well now, state as to each store in the district where either of those divisions was combined with some other division into a single department? A. In Batavia, New York, it is 75 and 83 are combined, and 84 and 87 are combined; in Cortland, New York 75 and 76 are combined, 83, 84, and 87 are combined.

Q. Excuse me just a moment. Do you have the dates or the periods of which that combination took place? A. No, I don't.

Q. Well, all right, go ahead then. But, the combination was effective by July, 1954? A. It was effective at the time of this, yes.

Q. Go ahead. A. Elmira, New York, Divisions 75 and 76 were combined, Divisions 83, 84 and 87 were combined; in Fulton, New York, 75 and 83 were combined, 84 and 87 were combined; in Geneva, New York, 75 and 76 were combined, 83, 84 and 87 were combined; in Glens Falls, New York, 83, 75 and 76 were combined, 84 and 87 were combined; in Gloversville, New York, 75 and 61 were combined, 83 and 84 and 87 were combined; in Herkimer, New York, 75 was a separate department and 83, 84 and 87 were combined. In Ithaca, New York, 75, 76 and 87 were combined; in Kingston, New York, 75 and 76 were combined and 87 was a separate department; in Lockport, New York, 75, 83, 84 and 87 were all combined under one

department head; in Middletown, New York, 48, 60 and 75 were combined, and 83, 84 and 87 were combined; in Newark, New York, 48, 60 and 75 were combined and they have no 87 department; in Norwich, New York, 48, 60 and 75 were combined and 87 was separate. They have a separate farm store in this particular locality; Poughkeepsie, New York, 75 and 76 were combined and they carried no 87 department; in Rome, New York, 75 and 76 were combined, and they also have a separate farm store.

Q. That would be farm store, Division 87? A. 87. And in Watertown, New York, I don't have the information on it, it is not written down.

Q. Would you go through that list—that last list that you have referred to and give the merchandise sold in each one of the divisions you have mentioned, just to be sure we have that in the record? A. Division 75 is the paint, Division 83 is electrical goods, Division 84 is hardware, Division 87 is farm equipment, Division 76 is wallpaper, Division 81 is plumbing, Division 48 is toys, Division 60 is

sporting goods. I think that covers all departments mentioned.

Q. Mr. Elliott, I show you a document which has been marked Respondent's Exhibit 16 for identification purporting to be a photostatic copy of a form designated "Weekly Payroll Report" and ask you if you can identify the document of which that is

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a photostat? A. Yes, sir.

Q. Will you state briefly what that is? A. It is a weekly payroll report that is submitted by each store in the region to the calculating department in Chicago, to the regional office, to the district manager and a copy of it is retained in the store.

Q. Now, can you tell from looking at Respondent's Exhibit 16 from what store that originated? A. Binghamton, New York.

Q. And for what period does it cover? A. It covers the week ending 6-2-54.

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Q. (By Mr. Dickson) Can you state in a general way, what the over-all purpose of this weekly payroll report is of which Respondent's Exhibit 16 is a copy. A. Well, it lets the supervisory departments that this report goes to understand and know what his payroll is running him by the week, so that we can in turn call the district

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manager or call him if we see it going completely out of line.

Q. By completely out of line you mean bearing too high a percentage to sales? A. That is correct. It also goes to Chicago so they can compile figures on our all company

basis to find out how our sales and payroll are running for each particular and given week, and it is a guide to the store manager so that he can look at this report and tell whether he is running out of line as far as his payroll is concerned based on budget and on last year, so that he will know whether to cut back or add to or what to do.

Q. If he consistently runs— if he runs above the budget is anything done by the regional office or the district manager, do they take any action in regard to it? A. Most assuredly, we either cut the basic or call the store manager and find out what the story is why he is running more and so forth. I would contact, as operating manager, the district manager and he would handle it then with the store manager.

Q. Now, going back for a moment on Respondent's Exhibit 16 to the line designated Line 7 in the middle of the page as allowance for extra wages, I will ask you whether or not the amount that is arrived at there as you have described has any bearing on the amount of non-basic help at the—

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that the store manager is authorized to employ? A. Yes.

Q. All right. Tell me what bearing it has. A. Well, he has to live within his approved allowances and consequently could only have extra people in that amount.

Q. Now, I think one way you said in which an approved allowance could arise, would be if his sales exceeded the sales quota, is that right? A. That is correct in selling departments.

Q. Now, is there any other way in which he can be authorized to spend more money for extra wages? A. By requesting the same of his district manager and having it approved.

Q. Now, by extra wages, does that designate a certain type of employee in the store, are extra wages paid to basic or non-basic or what kind of employees? A. Non-basic people, people that do not appear on the basic organization chart of the store.

Q. And by the basic organization chart we mean such documents as Respondent's Exhibits 14 and 15, is that right? A. That is correct.

Q. So the manager isn't required to list his extra people on those charts or on those reports? A. No, he isn't.

Q. Speaking from your own experience and practice while you

were regional operating manager of Region 4, how closely were the stores controlled with reference to exceeding their allowance for extra wages, did you permit them to run on any given period of time in excess of that, or did you cut them short at any certain point or what was your practice? A. They would be cut short by the district manager. In other words, once again on the regional level, it is necessary for us to look at the regional or district picture and call it to the attention of the district manager. There is a district report in addition to this report that shows each store within a district by week, the store, the percentage of payroll, the net sales and so forth, and the extra wages spent over and above the allowances.

If in the regional office we find that each store or several stores within a district have exceeded their authorized allowances by a considerable amount depending on the seriousness and the amount of the overexpenditure would call, wire or write the district manager and tell him that he must do something to bring his payroll in line immediately. Once again we are looking at a district picture

Then the district manager would pick up the phone and call or write the store manager and tell him likewise.

* * *

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Q. (By Mr. Dickson) Mr. Elliott, will you read off for the record first Division 75 starting with the month of January, 1953 and state the percentage increase or decrease from the preceding year, stating in each case the month, year and percentage increase or decrease. A. Just for 75?

Q. 75 first.

* * *

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Q. (By Mr. Dickson) I will change the form of my question.

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will you give in each instance the month and year then the Division 75 percentage increase or decrease and next the Division 87 percentage increase or decrease? A. January, 1953, 75 two point eight decrease; 87, eighty point eight decrease; February, '53, 75, eighteen point nine decrease; 87, fifty-three point five increase; March, 1953, 75, ten point nine decrease; 87, seventy point four increase; April, 1953, 75, twenty-one point two decrease; 87, forty-two point six increase; May, '53, 75, twelve point seven increase; 87, seven point three decrease.

June, 1953, 75, eight point seven increase; 87, three point seven decrease; July, 1953, 75, one point eight increase; 87, thirteen point five increase; August, 1953, 75, five point one decrease; 87, thirteen point three decrease; September, 1953, 75, eighteen per cent decrease; 87, sixty-four point nine per cent decrease; October, 1953, 75, five point seven decrease; 87, three point nine increase; No-

vember, 1953, seventy-five, seventeen point one decrease; 87, two point nine decrease; December, 1953, 75, eight per cent increase; 87, seventy-five point eight per cent decrease.

January, 1954, 75, thirty-two point nine decrease; 87, two hundred twenty-one point three increase; February, 1954, 75, eight per cent decrease; 87, ninety point five decrease; March, 1954, 75, four point six decrease; 87, sixty four point four decrease; April, 1954, 75, ten point

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two decrease; 87, 47 point four decrease; May, 1954, 75, thirteen point five decrease; 87, thirty-four point eight decrease; June, 1954, 75, fourteen point seven decrease; 87, thirty-three point four decrease; July, 1954, 75, thirteen point one decrease; 87, thirty-three point nine decrease.

August, 1954, 75, twenty point nine decrease; 87, twenty-five point seven decrease; September, 1954, 75, thirteen point five decrease; 87, twenty-nine point nine decrease; October, 1954, 75, ten point three decrease; 87, twenty-five point two decrease; November, 1954, 75, eight point nine decrease; 87, thirty-one point six decrease.

* * *

Q. (By Mr. Dickson) Mr. Elliott, did you communicate to the Binghamton store the conclusions which you and Mr. Levengood arrived at as the result of the review which

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referred to the basic organization of July, 1954? A. Yes sir, a copy of that basic is sent to—was sent to the Binghamton store.

Q. Did anybody see Mr. Rumple, the manager of the Binghamton store, personally about that, do you know? A. I don't believe so.

Q. You didn't in any event? A. No.

Q. Did you have any communication with the Binghamton store about that basic organization between the time that it was sent to the Binghamton store and the latter part of August to your knowledge? A. Not that I recall.

Q. Would those contacts normally be handled by the district manager Mr. Levengood? A. Yes, they would.

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Stenographic Transcript of Testimony at Hearing of January 14, 1955.

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PROCEEDINGS.

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ROBERT ELLIOTT resumed the stand, having been previously sworn, testified further as follows:

Direct Examination (Cont'd):

Q. (By Mr. Dickson) • • •

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Q. Now, at the bottom of this Respondent's Exhibit 80 appears the statement "Season to Date through November, 1954, 31.6 cr", is that a comparison of August, September, October and November, 1954, total with the corresponding months of the preceding year? A. That is correct.

Q. And you made that computation, did you? A. I did, yes.

Q. Now, these percentage figures where there is no symbol after the percentage figure that represents an increase, does it? A. That is correct.

Q. And where the words "cr" or credit appears after the percentage figure what does that represent? A. That represents a decrease.

Q. Now, have you projected the fall, 1954, figures through December, 1954, and January, 1955? A. Yes.

Q. Assuming the same percentage rate of decrease from the preceding year as the fall to date? A. Based on 32%, which is the 31.6 figure season to date through November rounded off. I projected December and January sales which would complete the fall of '54 based on December and January of the previous year, and using this

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percentage we would realize $184 sales in December and $82 sales in January.

Q. Now, having made that projection, what would be the projected total for the fall season, August, 1954, to January, 1955, inclusive, according to your computation? A. This would bring the full total to $4,789 for the fall period, 1954.

Q. And what was the projected figure at the time you and Mr. Levengood discussed Division 87 sales for the Binghamton store last July? A. Projected figure was $4,300.

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CROSS EXAMINATION

Q. (By Mr. Cavers) * * *

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Q. Well, if your report is dated, your basic organization chart, is dated July 21 1954, how up-to-date is it

then? A. Well, you have to understand that you always have to work three or four months ahead of yourself. We project sales at the store manager level. We project—he projects his own sales six months in advance. It is impossible to—

Q. Well, what were the bases for this projection then? A. Our last year's sales.

Q. To December of 1954, in '53? A. In this case, it would be to fall—the fall sales of '53. I assume that you understand inventory control projects the sales and they use the previous year's sales as a basis for projecting those sales.

Trial Examiner: One thing that isn't in the record here that I remember, Mr. Elliott, are what standards are used as a basis for these projections? I don't mean to interrupt your cross examination.

Q. (By Mr. Cavers) Well, that is what I was trying to get at, too. I don't understand either what was used as the basis for these projections. A. The previous—I can only tell you what I know the inventory control section does because I didn't personally project these and would not in any case personally project

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them. But, the way you project any sale is to take the previous year's period of sales, knowing what you did the previous year, in this case when we are dealing with six months, it would be the previous fall, then the trend that you have run in the first six months of this year as far as you have the figures and in July, July 31st, you would not have the July figures because we always—

Trial Examiner: No, I know, Mr. Elliott, I don't mean to argue with you, but that to me is just like saying in November, 1953, I made a hundred dollars

a week. Therefore, in April, 1954, I would make 125 dollars a week without any basis for my projection other than I think I might get it. Well, I just don't know what standard you apply.

A. There is no standard you can apply to projecting sales in retail business.

Trial Examiner: We are in a very important phase of this case. We have been told that Mr. Felker's department was not making money, and decided to eliminate that particular department head position, and we have figures here which tend to bear out the apparent contention of the Respondent that business was gradually decreasing and yet on the other hand we find that when you get down to the very essential and crucial period where the decision to eliminate your position was made that it was based on a projection of basic organization chart figures. Now, the government is

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contending and contending quite vigorously that these figures mean nothing, that Mr. Felker was in a position of having engaged in union activity and through manipulation of figures perhaps, or an application of a projection for the future the company was able to eliminate his position legally. Now, I would like to find out just what standards are used to project accurately to the point where you could determine that that was the department head position which should have been eliminated in August of 1954.

The Witness: If I understand you, you feel that there is some standard for the establishment—

Trial Examiner: There has got to be, otherwise it is just a pure guess.

The Witness: Well, if there is anything further than the use of the previous year's sales and the basis of the trend at the present time then I certainly do not know what it is, and I once again repeat that I do not project the sales. The inventory control department does project the sales, and they are set up to do that type of work.

Trial Examiner: Is this a fair statement, and certainly I don't want to press you too hard on this point, but in effect you are saying that experts in inventory control by reason of experience and a study of trends and their expert knowledge of the retail business applying their specialized knowledge in their best judgment—

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The Witness: That is very, very, very true.

Trial Examiner (Cont'd) —take the prior figures and apply to the basis of their experience and knowledge, apply to this particular situation and come up with the projection.

The Witness: They apply it to every store in the entire region exactly the same way. Now, if there is some standard percentage that they use, I have no knowledge of it. I would not say—there is not such a thing, I would not say that there is not such a thing. As I repeat, I do not project the sales. We have a separate organizational department within the organization that takes care of that.

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Q. (By Mr. Cavers) Well, did I understand you on your direct examination to testify that when there is a consolidation, let's say, of departments or divisions that

you never make the decision to eliminate an individual? A. That is correct.

Q. But, rather to eliminate a job? A. That is right.

Q. Now, referring to the last page of Respondent's Exhibit 14

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you notice that Division 87 there is a line drawn clear cross the page on the line of Division 87. A. That is correct.

Q. Is that right? A. That is right.

Q. Now, when was the decision made to consolidate 75 and 87? A. During the discussion of Mr. Levengood, the district manager, and myself when we reviewed the basic organization for District 2 in the regional office.

Q. When? A. The latter part of July to the best of my knowledge. I couldn't tell you the exact date as I reviewed with all six district managers at different times.

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Trial Examiner: It is the most curious thing in the world to me, Mr. Elliott, that a district manager who certainly must be interested in sales of the stores under his jurisdiction would eliminate a position without regard to the abilities of the person who occupied that position. Now, let me ask you this: Does it ever happen that in the elimination of a position the individual then presently occupying that position may be shifted to another position within the store and someone else be eliminated?

The Witness: That could happen.

Trial Examiner: And I ask you, I tell you very frankly we have testimony here, which seems to be good testimony, to the effect that Mr. Felker was

one of the best salesmen in—if not the best salesman in this store, and it is just inconceivable to me that careful competent management would abolish a position without regard to the person who occupied

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that position or without regard to taking care of him if he is a valuable employee.

The Witness: He could be shifted to another position.

Trial Examiner: Well, is there any policy on it?

The Witness: No, there is not. It would be up to the store manager. The store manager knows the person better than anyone else. That is the only thing I can tell you there, because in my position in New York as I stated yesterday I do not know Mr. Felker or do not know 99% of the people in the entire region in the category of departments.

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Q. (By Mr. Cavers) Well, at the time that this line was drawn through Department 87, was that line drawn through before or after you talked to Mr. Levengood? A. After I talked to Mr. Levengood, assuming that line is in red pencil.

Q. Well, I can't tell from the photostatic copy.

Mr. Dickson: The line is in red pencil, yes, on the original.

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Q. Now, at that time—well, what was the purpose in drawing the line through there at all? A. As you see on the previous page of that report, I put Division 87 back in and showed it as a combination with Division 75.

Q. Yes. Now— A. So the purpose in drawing the line through was so my girl when she typed the report, the corrected basic organization for the spring period, which I believe is Exhibit 15, she would take note of the red pencilled line through there and not place that department on, but show it as a combination with Division 75, and in this particular case, I believe I added a half-time reserve and she would also show that on the corrected report, which I believe is also Exhibit 15.

Q. Right under Mr. McGraw's name on page 4 of Respondent's Exhibit 14 is— A. Half-time reserve open.

Q. What does that mean? A. It means that I would have no knowledge of who he is going to put in the department, and it is an open position,

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until he submits a basic change giving me the correct name of the person and that can be recorded on the basic organization.

[redacted]

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Q. (By Mr. Cavers) Now, I show you Respondent's Exhibit 14 again, I refer to page 4 where it says 75-87, after it McGraw, J, and that department is entitled to one-half a reserve, is that correct? A. That is correct.

Q. And at how much? A. Twenty dollars.

Q. A week.

Trial Examiner: Now, Exhibit 14, Mr. Cavers, that is the July—

The Witness: That is the work copy that I had.

Trial Examiner: (Cont'd) —1954 basic?

The Witness: It is the work copy that I used in July.

Trial Examiner: I understand it is your work copy for July.

The Witness: The penciled figures.

Trial Examiner: Yes.

The Witness: Yes.

Q. (By Mr. Cavers) Now, if the store manager instead of hiring one-half a reserve at $20 a week hired a permanent

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employee, let's say, at $50 a week, then the store manager again wouldn't be following your basic organization chart, would he? A. Yes, he could be.

Q. Well, then the basic organization chart really doesn't mean too much? A. Yes, it does. In this particular case, he would have to charge the man half-time on the basic organization chart and earn the other part of his salary through extra allowances as described on the payroll report yesterday.

Trial Examiner: It just doesn't add up. You have names and salaries and departments on your basic organization chart.

The Witness: Correct.

Trial Examiner: Department heads, and that is supposed to be your basic organization and the store manager is supposed to be bound by it and yet when we get into the facts in the particular cases as Mr. Cavers just pointed out to you, Mr. McHugh was hired at forty or fifty dollars a week, whereas your basic organization chart shows half an employee at twenty dollars a week. So, how—

The Witness: Can I explain to you how you work that?

Trial Examiner: You have explained it, you said he has to make it up somewhere else.

The Witness: He has to charge—

Trial Examiner: So that your chart doesn't [illegible] anything.

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The Witness: Well—

Trial Examiner: I mean, your names.

The Witness: I can only say that Montgomery Ward uses this particular chart and has for years throughout the United States.

Trial Examiner: Well, that is all right. It may be for operational purposes, but what we are getting at here is that your listing of positions on that chart, doesn't mean anything except for dollars and cents purposes, and the balancing of your budget and the allocation of money for running of the store as far as individuals on there are concerned, and it seems to me that it is for a matter of convenience you call McHugh a half employee for $20 and then there is some money somewhere else over there where actually McHugh is on the payroll at $40 or $50.

The Witness: But, it should be understood that the day he doesn't make his extra allowances, the day that his sales do not warrant extra allowances enough to take care of Mr. McHugh, then he will have to cut him down. Whoever Mr. McHugh is, and I don't have any knowledge of who he is, whoever the individual might be. He would have to cut him to his half-time and live within his basic organization.

Trial Examiner: That is all right from dollars and cents angle. But, we are dealing here in this particular case, Mr. Elliott, with the individual. We are concerned with one

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Mr. Felker.

The Witness: Well, I couldn't tell you—

Trial Examiner: And in this particular matter, Felker's job is eliminated, you say. Well, actually was it eliminated?

The Witness: His job was eliminated, yes.

Trial Examiner: Well, I don't know whether it was or not.

The Witness: Well, Department 87 is an individual job or as an individual job was eliminated as far as I am concerned.

Trial Examiner: I am sorry, I don't mean to argue on the point.

The Witness: Well, I can only give you the facts as I see them.

Trial Examiner: I am telling you very frankly as far as your organization chart impresses me as to individuals, I don't think it means an awful lot at this point.

Q. (By Mr. Cavers) Now, Mr. Elliott, will you tell us in your own words what a reserve employee is. A. As is a salesman, someone other than a department head allocated to the particular department which it might apply to the basic organization.

Q. Well, let's assume you were the department head and I worked in your department and I was the only employee, would I be the reserve? A. That is correct.

Q. Now, a reserve employee, do you carry them on your basic

organization chart? A. That is right.

Q. Now, if the payroll of the company carried an employee as a reserve employee at the time this was compiled, should that reserve employee's name be included on this basic organization chart? A. Would you repeat the question, please.

(Question read.)

A. Yes.

Q. (By Mr. Cavers) Now, when I said on this I was referring to Respondent's Exhibit 14. A. Well, I would have to know specifically, you mean if we have a reserve in the company?

Q. Right. A. In the Binghamton store?

Q. Right. A. Would that reserve appear on here?

Q. Yes. A. If it was a basic person, yes. In other words, if the department called for—

Q. Well, just a minute now. I understood you to say that a reserve is a basic person? A. That is correct, that is right.

Q. All right. Now, I show you Respondent's Exhibit 14 which is a payroll list of employees in the company's store.

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Trial Examiner: That is four, isn't it?

Mr. Cavers: Four.

Q. (By Mr. Cavers) In August of 1954. I refer to page 3, I show you the name "Witter, Irene," Division 29. "Res", Reserve, and I now hand you Respondent's Exhibit 14 and ask you to show me on there the name of Irene Witter. A. First of all, I don't know what he—this isn't a company form that I know of.

Q. This was taken I will tell you for your own information and compiled, a list of employees that was compiled by the company from the company's payroll. A. I see.

Q. I know that you didn't compile Respondent's Exhibit 14. A. There is no reserve in 29 as far as I am concerned.

Q. All right. A. In the regional office.

Trial Examiner: Would you tell me once more, Mr. Elliott, what a reserve employee is.

A. Well

Trial Examiner: Let me put it this way: Why is a basic employee called a reserve?

The Witness: Well, because you have to have some name to give it, I guess, and that particular name is what we used. I don't know of any other reason why we call them that, see, I mean, you could call them a sales clerk or you could call

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them anything, but we used the word reserve. I don't know why the word is used other than it is just a word that we use for the particular designation.

* * *

RE-DIRECT EXAMINATION:

Q. (By Mr. Dickson) * * *

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Q. Now, in discussing Respondent's Exhibit 14, Mr. Elliott, you spoke of the figures inserted in here as being projections based upon the last year's sales. Now, did those projections take into account the current year's sales insofar as they were available? A. The trend, yes, sir.

Q. The trend that compared to the preceding year, month by month, is that right? A. Right.

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Q. Now, in discussing specifically the combination of Divisions 75 and 87, you said, I believe, that as far as you were concerned, you did not consider the individuals who occupied the position when Divisions 75 and 87 were combined and there would be one department head instead of two as previously, is that right? A. That is correct.

Q. Now, who would make the decision as to which of the two department heads, Mr. Felker or Mr. McGraw in this case, would be the one to survive as you might say?

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A. I would say the store manager.

Q. Would he consult with, to any extent, his district manager in making that decision ordinarily? A. He could. I don't think—I don't see that it is—it would be necessary.

Q. So, now, I believe you testified on your previous direct examination that—no, I will strike that question. Now, will you explain again as the basis for a further question or questions what the situation was with regard to the number of positions and the salaries in Divisions 75 and 87 before the change of July, 1954, was made and after the change of July, 1954 was made. A. Before the change Mr.—according to this, Mr. McGraw had Division 75 at $60 a week and Mr. F. Felker had Division 87 at $70 a week.

Q. And that was the basic personnel of those two divisions or departments? A. That is correct.

Q. Is that right? A. That is correct.

Q. Now, after the change was made, what was the situation? A. I eliminated Department 87 and added a half-time reserve to the combination of 75 and 87.

Q. So that there remained one department head, is that right? A. That is correct.

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Q. Now, that could have been either Mr. McGraw or Mr. Felker, right? A. That is correct.

Q. And the second person would be half time instead of full time, right? A. That is correct.

Q. Now, under what circumstances could the store manager increase that half-time person to a full-time person subsequently? A. On the basis?

Q. No. I mean, whom he could actually hire as an extra or basic, either way? A. As long as he earned money, he could hire a person full-time, charge him half-time to the basic organization on the payroll report, and the remainder of the salary would be used from extra allowances as developed by the percentage based upon—based against sales.

Q. Now, I will ask you to look at these weekly payroll reports which have been marked Respondent's Exhibits 16 to 46 inclusive, and tell me whether or not you can tell from those reports subsequent to, let's say, the end of July, 1954, whether or not the store manager at Binghamton had any money available from which he could hire a full-time person in the combined departments 75 and 87 or whether he couldn't. A. This is after July?

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Q. Yes. In other words, you have testified that this decision to have one and a half people was made at the end of July. Now, would you run through those reports subsequent to that date and tell me whether there was any change in the situation reflected in those reports and if so, point out what it was. A. Well, as far as I can see, he earned money in the allowance category with two or three exceptions.

Q. Did he have any extra money for payroll purposes? A. He did with two or three exceptions.

Q. Well now, we are directing our attention particularly to Divisions 75 and 87 and our specific question is did he have any extra payroll money as reflected in those reports which would authorize him to increase that half-time person to full-time? Would you tell us what you find there? A. Yes, he earned extra money in non—in the non-commission divisions in all—with the exception of a few cases on these reports. One I note—

Q. We better refer to a specific exhibit. A. He earned the money each week according to these reports in two or three cases he overspent what he earned.

Q. Now, will you start with the report, the weekly payroll report for—whenever is the appropriate time here, the first of August or so. A. 8-4.

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Q. 8-4. A. Exhibit R-25, I guess.

Q. Did his payroll money in non-commission departments which would include Divisions 75 and 87 increase after that time, did his available funds increase, and if so, point out specifically in what respect they did. A. Increase over what?

Q. Well, I mean—what I am trying to get at, Mr. Elliott, is this: As of the end of July, you and Mr. Levengood decided that the projected sales in Divisions 75 and 87 would support only a combination division with the department head and a half of a reserve or second person on the payroll. Now, you recall that there is testimony in this record, or maybe you don't, but I will tell you that sometime in September, I believe the latter part of September, a full-time extra was employed in that department, and actually worked full-time from then on. Now, in so doing, was Mr. Rumble exceeding his authority or did he have funds from which it was proper for him to do that. Can you answer that question from those reports? A. He had funds for which it was proper for him to do it, yes.

Q. All right. Point out specifically on these exhibits where that is the case, give us an illustration or actual figures.

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A. Well, on August 4th—

Q. Now, let's use our Exhibit number. A. Exhibit 25 he earned $80 and he spent $80. In Exhibit 26 he earned—

Q. You are speaking of non-commission departments now? A. That is right. He earned $19 but he spent $120. He was $111 over his payroll * * *

Q. (By Mr. Dickson) Exhibit 26 that you just referred to is the report for the week ending August 11, 1954, isn't it? A. That is right.

Q. Go ahead.

Trial Examiner: When you say that the store earned that money, you say, I think you mean, it earned the money in the sense of application of percentage costs to the basic store sales.

The Witness: No, to the net sales.

Trial Examiner: To the net sales.

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Mr. Dickson: The net sales over the basic.

The Witness: The net sales over the basic.

Trial Examiner: In other words, 13.8% of the—if that was the figure—

The Witness: No, the figure is an applied formula percentage that is applied to the excess sales over the basic sales in the non-commission department.

Trial Examiner: Which the store manager may allocate as he sees fit.

The Witness: That is correct.

Trial Examiner: Without permission of the district manager?

The Witness: That is correct. On Exhibit 27 he earned—

Q. (By Mr. Dickson) You might give the dates as well as the exhibit numbers. A. Week ending August 18, he earned $167 and used $121. On August the 25th, Exhibit 28, he earned $127 and used $75. On September the 1st,

Exhibit 29, the amount of the allowance is not shown on this report. He used $78 and he would have earned much more than that. On September the 8th, in Exhibit 30, he earned $190, he used $61.

On Exhibit 31, September the 15th, he earned $78 and he used $55. On September 22nd, Exhibit 32, he earned $1[illegible] he used $105. On Exhibit 33, 9-29, he earned $162 if I can add, and he used $140.

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On October the 6th, in Exhibit 34, the percentage, or the amount is not figured on the report. He spent $78 and he would have earned at least that much. On October 13th, in Exhibit 35 here, he earned $195 and he spent $133. On October 20th, Exhibit 36, he earned $155 and he spent $105. On Exhibit 37, October 27th, he earned $213 and he spent $111. On November the 3rd, Exhibit 38, he earned $210 and he spent $89.

On November 10th, Exhibit 39, he earned $252 and he spent $86. On November 17th, Exhibit 40, he earned $25[illegible] and he spent $73. On November 24th, Exhibit 41, he earned $266 and he spent $71.

Now, in Exhibit 42, December the 1st, he earned $336 and he spent $175, and in Exhibit 43, December the 8th, he earned $638 and he spent $499. On December the 15th, Exhibit 44, he earned $733 and he spent $734. On Exhibit 45, December the 22nd, he earned $1,117 and he spent $1,283, and on December the 29th, Exhibit 46, he earned $263 and he spent $261.

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Q. (By Mr. Dickson) Now, I call your attention to Respondent's Exhibit 26 and—for the week ending August 11, 1954, and there appears down in the lower left-hand corner

under selling personnel approved basic 38, and under this year 43. What does that indicate with reference to the number of personnel that the Binghamton store had on the selling payroll

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as compared with its basic? A. In a case that he had five more people than were basic, five people over the basic.

Q. Those would be extras, wouldn't they? What are known as extras? A. Yes.

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Q. Let's talk about the selling employees, because that is what we are primarily concerned with. I think you said there were five over on August the 11th. How many were there over on August 18th? A. There were two over.

Q. And the next week, go ahead. A. There were three over on August 25th, September 1st, he was two over, September 8th he was two over, September 15th he was one over, September 22nd he was three over, September 29th he was three over, October 6th he was three over, and

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October 13th he was three over, October 20th he was three over, October 27th he was two over, November 3rd he was two over, November 10th he was three over, November 17th he was two over, November 24th he was seven over, December 1st, he was eight over, December 8th—have you got a pencil? He was 23 over. December 15th he was 26 over, December 22, he was 42 over, and December 29 he was 15 over.

Q. In the normal course of operation, those excesses in the latter portion of the period would be extras for Christmas rush, would it not? A. That is correct.

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RE-CROSS EXAMINATION:

Q. (By Mr. Cavers)

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Q. I believe you testified that you eliminated department 87; you didn't eliminate Department 87? A. No. I thought about it when I said it. I combined it with Division 75, or Department 75. I eliminated that as a separate department.

Q. Now, you heard us say that they carried this Mr. McGraw, Mr. McHugh? A. I heard his name.

Q. $50 a week, I think Mr. Rumble testified in Mr. McGraw's department. Now, instead of carrying Mr. McHugh in Mr. McGraw's

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department if they had carried instead an outstanding salesman, let's assume that this man could have sold more through his experience and so forth then that would have justified carrying the man, wouldn't it?

Mr. Dickson: I don't think the witness should be requested to speculate on some vague—

Mr. Cavers: No, now he said the more a man can earn for the store, the more he is worth to the store, isn't that right, the more sales he can make?

The Witness: Well, that is certainly true.

Trial Examiner: Of course, Mr. Dickson, that is something that puzzles me here, and I may as well tell you very frankly why I puzzled in connection with this. The testimony so far seems to me to show that Mr. Felker was a competent man. The testimony shows that in the revision of the basic organization structure for this store, Mr. Elliott and Mr. Levengood decided to combine these two departments and Mr. Felker became a casualty. That is all right

up to that point, but here, from here on out we find that without regard to whether you call Mr. McHugh's job a half job of $20 or whether you look at the facts and see that it is a full job in Mr. Felker's old spot at $50 and then when you find out that the store is earning X dollars month after month above the basic which would take care of the difference between the $50 paid Mr. McHugh and the $70 paid to Mr. Felker, you wonder where

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the economy is and what the justification is for getting rid of Mr. Felker. Now, Mr. Cavers has just asked, it was sort of a hypothetical question to the effect that Mr. Felker being a good salesman could be expected to produce more than Mr. McHugh and justify the continuance of his job, and that is in the back of my mind too. I just wondered was it—the government is saying in effect that Mr. Felker was eliminated because of his union activities. The Respondent says no, that isn't true. This is just good management.

Mr. Dickson: Well, it was management, good, bad or otherwise.

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C. M. LEVENGOOD, a witness called by and on behalf of the Respondent, being

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first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Dickson) State your name, please. A. C. M. Levengood, L-E-V-E-N-G-O-O-D.

Q. Where do you live, Mr. Levengood? A. Syracuse.

Q. What is your occupation? A. District manager with Montgomery Ward.

Q. Are you at present in charge of the district in which the Binghamton store is located? A. At present, no.

Q. Were you previously district manager of that district? A. Yes.

Q. And what was the designation of that district? A. Two.

Q. In Region 1, is that right? A. In Region 1.

Q. For what period of time were you district manager of District 2 in Region 1? A. A little over two years.

Q. Would you give me the dates, please. A. Well, I was made district manager of District 2 in Region 1 on November the 1st, 1953—two.

Q. Stop and think, you can't remember? A. Two.

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Q. Was it '52? A. Yes.

Q. November, '52, and how long—to what date did you hold that position? A. Until the districts were revised this past month effective—well, actually a sheet just came out on it last week, I'd say around the 3rd of January this year.

Q. Early in January of '55? A. Yes.

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Q. Mr. Levengood, I will show you Respondent's Exhibit 14.

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which is a copy of the basic organization dated December 26, 1953, and Respondent's Exhibit 15, a copy of the basic organization dated July 31, 1954, for the Binghamton store, but let me ask you before we go into the details of that

did you at any time up through August, 1954, have any knowledge as to union activity in the Binghamton store? A. Prior to it or--

Q. Including August, up to the end of August or, say, September? A. Yes, yes, I had knowledge of union activities in the store.

Q. Did you have any knowledge as to what individuals in the store were or were not members of the union? A. No, I did not.

Q. Did in any of the cases of reorganization of departments in your district which you have described, did any union activity have a bearing on your decision? A. None whatsoever.

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Q. Were there any unusual or special circumstances surrounding the transfer of Mr. DuFour? Well, let me ask a more specific question: Did Mr. DuFour come to Binghamton with any different authority or any different position than any department head who might be transferred within your district?

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A. No, just department head of the appliances.

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Q. (By Mr. Dickson) I hand you a document which has been marked Respondent's Exhibit 81 for identification which bears the caption "Department Head Rating by Store Manager and District Manager at the time of each visit to store by District Manager, Binghamton, New York" and ask you whether you ever seen that document before. A. I certainly have. My initials are on it.

Q. Is this a standard form that is kept in each store in the company as far as you are acquainted with? A.

Every one of my stores has this form, yes, in every store. I guess it is in every store.

Q. At least in your district, is that right? (No response.)

Q. Now, what individuals are listed on here? A. Well, your department heads are listed on here, divisional department heads and also your credit and your—well, your office department heads or clerks.

Q. Now, what is the purpose of this document, Respondent's Exhibit 81, what purpose does it serve in the organization?

A. Well, this is a rating form to show the performance of each one of these individuals listed hereon.

Q. And was—how was it prepared? A. Well, you prepare it by putting their per cent of increase or decrease in their particular divisions which they are in charge of and comparing it with the performance of the district for those particular divisions. You also put in their selling cost for the previous month from which this is made.

Q. Well now, looking—oh, by the way, how often is this rating made? A. It is supposed to be made every six months.

Q. Is it made— A. And in most cases it is.

Q. Does the district manager participate in it to any extent? A. The district manager?

Q. Yes. A. Yes, I look it over with the manager.

Q. Now, directing your attention specifically to the bottom of this exhibit where there appears 3-17-54 and some initials, can you read them? A. Yes.

Q. What are they? A. 3-17-54, C. M. L., they are my initials.

Q. Did you put them on there?

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A. They are my initials.

Q. And you wrote them? A. Yes.

Q. Was it at that date that you made that review—made a review of this report with the store manager? A. It was.

Q. Where did that review take place? A. In the manager's office.

Q. In the Binghamton store? A. Yes.

Q. Now, let's take the individuals that we are most interested in here, we come down to about the twelfth name which is listed as J. McGraw, 75-76, that would mean that he was the department head of 75 and 6, wouldn't it? A. That is correct.

Q. Then I note the next column says length of service of this division, 8-7-50, that would be the length of time that he had been department head, would it? A. In that division, yes.

Q. And would be the length of time he had been with the company altogether? A. That is correct.

Q. Then the next column is described as per cent sales increase period to date, division and district, and opposite McGraw there are two figures in parentheses under Division,

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the upper one 10.9 and the lower one 26.8, what are those —what is the significance? A. That 10.9 would be the per cent of decrease in Division 75, 26.8 would be the per cent of decrease in 76.

Q. How do you know that those are decreases as distinguished from increases? A. By the parentheses around them.

Q. Parentheses indicates a decrease, does it? A. By the parentheses around them.

Q. And the top one would be 75 and the bottom one would be 76, is that right? A. Yes.

Q. Then in the district under the next column we have 1.7 and 14.3 and those are the corresponding figures for the district—for District 2, are they? A. Yes, they are.

Q. Now, the next column reads per cent previous month selling cost, 17.9, will you explain that figure? A. That is his—McGraw's selling cost, McGraw's selling cost for the month of February.

Q. Well now, that is stated in terms of a percentage and it is a percentage of what? A. Of his sales.

Q. And what is included in the selling cost is just Mr. McGraw's salary or anything else?

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A. That is all.

Q. Now, we come to over-all rating opposite Mr. McGraw's name, three, was that put in before, during or after your discussion of March 17th with Mr. Rumble? A. That was put in during the discussion with Mr. Rumble.

Q. Is it the practice for the store manager to withhold those ratings until his discussion with the district manager? A. Usually, yes.

Q. Now, that three is on a scale of what? A. Well, as it so states on the bottom here, from one to five.

Q. Five is extremely satisfactory, four noticeably satisfactory, three satisfactory, is that right? A. That is right.

Q. Two noticeably unsatisfactory and one extremely unsatisfactory, remove immediately? A. Right.

Q. Are those the significant indications you gave to those marks in using them? A. Yes.

Q. Now, so that Mr. McGraw was satisfactory, is that correct? A. He had a three rating which was satisfactory.

Q. Did you personally know Mr. McGraw? A. Yes.

Q. At that time, I mean, of course.

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A. Oh, yes.

Q. You had met him, had you? A. Yes.

Q. And state whether you were in arriving at that rating, did the department—did it represent the judgment of yourself and Mr. Rumble on Mr. McGraw? A. It did.

Q. And was that judgment based on any or any extent on your own observation of Mr. McGraw and did you rely on Mr. Rumble or did you rely on Mr. Rumble? A. Well, it is a combination of both my own and Mr. Rumble's opinion.

Q. But, I take it that you concurred with it or it wouldn't be there, is that right? A. That is correct.

Q. Now, in the final column under Action, I believe there is a notation, is that right? A. Yes, O. K.

Q. Who put that in there, if you know? A. Well, I don't know who put that in there.

Q. Well, was it— A. I suppose Mr. Rumble put it in there after we talked with—concerning these department heads.

Q. Was it put in during the meeting or subsequently, do you know? A. Generally, it is put in during the meeting.

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Q. You have no recollection of the specific case? A. Not this specific case, I can't tell you.

Q. What is the purpose of that action column? I mean, the notation in that action column? A. The purpose of it is to do just this: When I come back on my subsequent visit and review this again, I go back and see whether the action as designated in this action column of the previous review has had any action taken upon it, whether the man

has been replaced or an addition has been made or whatever has been done for it.

Q. Now, what is the conclusion represented by the notation "O. K."? A. That means he is satisfactory, we will leave him on the job.

Q. All right. Now, let us go down to Mr. Felker, Division 87, Felker, F. And under per cent sales increase period to date, Division—it is 19.2 in parentheses, that indicates, I take it, a 19.2 per cent decrease up to the time of your discussion, isn't that right? A. That is correct.

Q. Over the preceding year, corresponding period? A. Right.

Q. And then the district shows a 20.4 decrease, is that right? A. That is correct.

Q. And the selling cost as stated is 16.7, that is a percentage likewise, is that right? A. That is right.

Q. Now, over-all rating is stated as two? A. That is correct.

Q. You participated in putting that down, did you? A. I did.

Q. And at the bottom of this chart, it is stated "Noticeably Unsatisfactory", did that represent your conclusion as well as Mr. Rumble's? A. It did.

Q. Were you personally acquainted with Mr. Felker? A. I was.

Q. Now, what factors or what knowledge influenced you concerning him, influenced you in reaching that two rating, if you can state it at this time? A. Well, the sales basically in this division had been going down, and Mr. Felker was rehired I believe to help bring them back up again. However, to the best of my recollection and according to these figures here, they did not react to Mr. Felker's sales ability.

Q. Well, Mr. Felker's sales as you will note here were—while they were done—were slightly better than the district? A. That is correct.

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Q. The district, in that division. Was the sales the primary consideration in view of that fact? A. Well, on this particular point here the sales were the primary consideration, but this 20.1—20.4 decrease in Division 87 sales district, which are reflected in a different manner and by that I mean this: There were some divisions in the district which were not carrying the 87 parts and the accessories and all the materials that we had previously carried in 87 prior to this, therefore, the sales totally would be down. Now, in Binghamton, we were carrying some less items too, but we were still carrying the major items in Division 87 whereby sales could have been obtained. So, really, there is no—no basis here or fundamentally no comparison on this 20.4 decrease by district and 19.2 decrease by store in Binghamton at that particular time.

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Q. (By Mr. Dickson) Do you take into consideration in rating these department heads any factors other than sales, if so, what are they? A. Well, yes, their merchandise position whether they are or are not overbought, their B and X position, that means their old merchandise stock, their displays, their attitude in general as regards their position.

Q. Do you have any specific recollection of those points with reference to Mr. Felker at this time? A. No, I do not.

Q. Now, in the last column under action is the word "replace". Do you know whether that was put in before,

during or after your conference of March 17, 1954, with Mr. Rumble? A. Well, that is not my writing. I would have to assume. I don't actually know. I believe it was put in while I was present.

Q. But, you do not have any specific recollection on that point? A. No, I don't.

Q. Do you have any specific recollection as to whether or not you and Mr. Rumble reached such a conclusion with reference to Mr. Felker? A. That he should be replaced?

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Q. That he should be replaced, did you or didn't you? A. During our conversation relative to the combining of the divisions I restated—restating that one of the two would have to go and it was decided that Mr. Felker would be replaced.

Q. Did that have anything to do with his overall rating as compared to Mr. McGraw? A. Well, yes, in part, yes. I would say it would have.

Q. Were there any other factors that were taken into account that you recall? A. Offhand, no.

Q. I have asked you the general question, but I will ask you specifically with reference to Mr. McGraw and Mr. Felker whether you had any knowledge one way or the other as to either of those men were engaged in union activity or were members of any union? A. None whatsoever.

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Q. (By Mr. Dickson) At the time that you had your conference

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with Mr. Rumble on March 17, 1954, were there any union activities in the Binghamton store to your knowledge? A.

Not to my knowledge there weren't union—I don't know of any.

Q. If there were, you didn't know it? A. That is right.

Q. When did you first become aware of union organizational efforts in the Binghamton store, approximately? A. Oh, I'd have to be general, I'd say it was approximately around July, August, somewhere around there.

Q. Do you have conferences with the regional manager or the regional operating manager on the basic organization for each of your stores? A. Very definitely I do.

Q. How often are those conferences held, do you know how often—how often do you review those basic organizations? A. Every six months.

Q. And what month of the year are those generally speaking? A. Well, there is one in July, usually and one in January.

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Q. Now, would you discuss the basic organization on each of these stores or of those stores that you—at your semi-annual conferences? A. Every one of them.

Q. With what individual were those conferences held? A. With the regional operating manager.

Q. Now, directing your attention to the Binghamton store and the—was there a conference on that store as well as the others about July, 1954, with the regional operating manager? A. There was.

Q. And the regional operating manager was what individual at that time? A. Mr. Elliott.

Q. I show you a document which has been marked Respondent's Exhibit 14 purporting to be the basic organization dated December 26, 1953, but bearing the pencil notation 7.31-54, was that the organization list you used

in holding your July, 1954, discussion on Binghamton?

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A. It was.

Q. Did you participate in each of the eliminations and changes shown in the personnel list in that exhibit? A. I did.

Q. Now, calling your attention to the last two pages, well, to the last page first, there is listed "Felker, F., Division 87," and a line drawn through that; was that position eliminated at that time, that conference, do you recall? A. Yes.

Q. And then there is on the previous page, "McGraw, J." is listed and will you explain the significance of the notations around his name. A. Well, it was combined. 55 which is paint, under McGraw, was also given the addition of 87 under McGraw with a half-time reserve added.

Q. Now, what is meant by a half-time reserve? A. Well, that is a half-time individual who is put on the basic to take care of sales and cleaning and dusting and the upkeep of the division.

Q. Now, what change in the salary or wage expense of those two departments resulted from that change? A. Well, there was $70 for Felker which was eliminated and $20 for the half-time reserve which was added, a variance of $50 and a saving of $50.

Q. That would be $50 a week, would it?

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A. That is correct.

Q. Now, do you have a specific recollection of the discussion on that change in Binghamton at this time? A. Yes. It was decided that since Division 87 in Binghamton at that time was not producing the sales and in view of the fact that we were coming into the slow period on 87, the

fall period, that we could not afford to pay Mr. Felker the $70 as a separate department head for that division.

Q. Did you yourself have in mind any choice as between Mr. Felker and Mr. McGraw as to which one would remain heading the combined departments? A. Not in particular. I would have made a choice, yes.

Q. Well, I want to ask you specifically: does the fact that Mr. Felker's name is ruled out indicate that there had been a definite decision that Mr. Felker was the one to go as a result of your meeting with Mr. Elliott? A. In this respect it did. It meant that this division had to go and as a result Mr. Felker would have to go since he was present department head of that division.

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Q. I will show you some documents which have been marked Respondent's Exhibit 16 through 46 inclusive purporting to be copies of weekly payroll reports of the Binghamton store and ask you if you recognize them as such copies of those reports? A. I do.

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Q. Now, I now direct your attention specifically to Respondent's Exhibit 26, the report for the week ending 9-11-54; now, does that indicate that the store was spending any amount for non-commission selling expense in excess of allowable? A. It sure does, $111.

Q. That was for that week, ending with that date, is that right? A. For that week, that is correct.

Q. Now, did you have any discussion with Mr. Rumble or any of the other store personnel at Binghamton with regard to the excess shown on that report, if you recall? A. I can't recall any definite conversation concerning this report. I may have or I may not.

Q. Or any other communication? A. No.

Q. Well, then I will ask you what your general practice is with regard to a store report that shows an excess—let me ask you first, do you consider that amount minimal or nominal, or do you consider that a substantial excess? A. That is a substantial excess.

Q. Well, do you have any practice with reference to conferring with the store manager or taking any action in cases where a weekly payroll report shows a substantially excess like that on Respondent's Exhibit 26?

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A. I most certainly do.

Q. What is your practice in that respect? A. Well, there are various practices. I may circle this figure and write notations across it explaining that he exceeded his payroll on this date in the amount of $111, and although he has explained it below, I don't consider that a satisfactory explanation. I may call him on the phone. I could possibly have called him on this one because it is so excessive. When they are extremely high I generally do call them on the phone that week after I review these reports, wanting a definite answer as to why they exceeded their payroll expenditures so extremely.

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Q. (By Mr. Dickson) Whatever the means of communication may be, telephone or letter, or other, do you customary follow any practice with reference to requiring the store manager to take action when an excess such as that appears? A. I do.

Q. What is that practice or was that practice at that time? A. That they do not exceed their basic payroll in any case unless they have prior approval from my office.

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CROSS EXAMINATION:

Q. (By Mr. Cavers) Approximately, when was it, Mr. Levengood that you and Mr. Rumble—I am showing you now Respondent's Exhibit 81—discussed the rating of Mr. Felker on Respondent's Exhibit 81? A. This was in March.

Q. In March of '54. And as I understand your testimony that during the course of that discussion with Mr. Rumble, you discussed Mr. Felker and Mr. McGraw, is that right? A. We discussed every employee on there including Mr. McGraw and Mr. Felker.

Q. And as I understand your testimony that in the course of the discussion with Mr. Rumble you discussed specifically, Mr. McGraw and Mr. Felker with respect to eliminating one or the other of the departments, is that right? A. Well, let me put it this way: We discussed eliminating the department and as such eliminating one of the two, yes.

Q. Now, this took place back in March? A. That is correct.

Q. Now, the rating as shown on Respondent's Exhibit 81 of Mr. Felker is two, is that correct? A. That is.

Q. And two means noticeably unsatisfactory. And as I gather

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from your testimony that that—you correct me now if I am wrong—is that the prime factor that entered into the consideration of giving Mr. Felker his two rating as shown on Respondent's Exhibit 81 was because of his poor sales? A. That was one of the factors.

Q. Well, was that the most important factor? A. Well, that is difficult to answer whether it would be his sales.

I would say it would be one of the most outstanding factors.

Q. Now, showing you again Respondent's Exhibit 81 under the—under March, you have got the legend "Action" at the top of a column. A. Uh huh.

Q. And then there are some notations after various names of "O. K.", what does "O. K." mean? A. That means that they are satisfactory to stay on their job as they are.

Q. In other words, that they are noticeably unsatisfactory but they are O. K. to keep them on their job? A. If that is as it is so designated there, yes.

Q. Do you recall what the other factors were that entered into the giving of Mr. Felker the rating of two? A. Well, as you say one was sales, the other was the fact that Mr. Felker was not—evidently available to handle the relays when they took place in the basement. I am talking

about merchandise relays, and in addition to this I believe there was some question as concerns his buying, and which he was not the best buyer as far as his merchandise position was concerned, and they are the other two factors that I know of offhand.

Q. Now, you had known Mr. Felker, had you not, since you became the district manager? A. I have known Mr. Felker since he became—since he came back on the job.

Q. I think that was around March of '53? A. I don't recall the exact date he came back.

Q. Well, when was it first brought to your attention that his relaying wasn't up to par? A. Well, on several visits through the store previous to this naturally that is one of my jobs to look at the various divisions and see whether they are displayed prominently and merchandised

prominently, and of course, I ask questions and during those tours and whatnot this had been brought up previously, I cannot give you a specific date for it.

Q. Well, had this come to your attention in the year 1953? A. Well, I guess—I can't answer that yes or no, but I would say yes since I have been in there in '53.

Q. Now, with respect to Mr. Felker's ability as a buyer when did it first come to your attention that he wasn't a good buyer?

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A. I would say that would be in that same period.

Q. Would you say that that he wasn't a good buyer from the time he returned in 1953 up to the time he was released by the company? A. Well, I suppose it would cover the entire period.

Q. Now, would you also say that his sales were poor back in 1953, too? A. I would have to look at the records to see whether they were or not, I couldn't answer.

Q. Well, without looking at the records, can you recall? A. It seems to me that Division 87 sales have been poor, yes, in '53.

Q. So this Mr. Felker then was unsatisfactory from the time that he returned to the employ of the company in 1953 from there on, there on out, is that right? A. Well, I couldn't say from the very beginning there on out, no.

Q. Well, would you say substantially over the entire period that period that I have mentioned? A. Part of that period.

Q. What part of it? A. Probably the latter part of it.

Q. Now, let's go back again to March of 1954 when you and Mr. Rumble gave the two rating to Mr. Felker as shown on Respondent's Exhibit 81, did Mr. Rumble at that

time agree with

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you that his sales were poor? A. Obviously he did.

Q. Now, what do you mean the term—the term has been used here by "personnel production". A. That is the amount of sales they make over and above a quota that they have, whereby they are paid a percentage on that—on those sales.

Q. Now, I think in Mr. Felker's case that he received 4% in sales in excess of— A. That is correct.

Q. (Cont'd) —$600 a week. A. That is correct.

Q. Now, if he exceeded those sales, exceeded these $600 a week, would you say that his selling was good? A. If he exceeded the—if he drew his personal production every month, yes, I would.

Q. Now, subsequent to your meeting with Mr. Rumble in March of 1954, did you ever meet with Mr. Rumble again and talk to him with respect to the release of Mr. Felker? A. I have no recollection of the—except possibly in the reviewing the new basic I may have. I doubt—I don't know, I can't answer that question.

Q. Do you ever recall an occasion talking with Mr. Rumble in which you took the position that as between Mr. McGraw and Mr. Felker that Mr. McGraw rather than Mr. Felker should

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be let go? A. No, no.

Q. Did you ever take such a position? A. No, it was always taken in view of the position as far as I can remember—

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RUTH BREWER a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Dickson) State your name, please. A. Ruth Brewer, B-R-E-W-E-R.

Q. That is Miss or Mrs.? A. Miss.

Q. And where do you live, Miss Brewer? A. 236 Main Street in the city.

Q. Binghamton? A. Binghamton.

Q. And are you employed? A. Yes, I am.

Q. By whom? A. Mr. Rumble, Montgomery Ward's.

Q. In the Binghamton store? A. That is right.

Q. What is your position?

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A. I am the USCO clerk.

Q. You better spell that out. A. Unit stock control.

Q. And how long have you held that position? A. Well, I have been up there two years, two years in February it will be.

Q. Now, in the spring of 1954, did Gladys Witter work for you at any time in that unit? A. For a very brief time.

Q. How long a period would you say? A. Oh, I would say about three months anyway, off and on, it wasn't anything steady though.

Q. Perhaps you better tell us briefly what you do in this unit stock control. A. Well, we take care of all the books, the ordering, and—well, all the work that has to do with the ordering.

Q. The ordering of merchandise? A. That is right.

Q. Do you keep records of the merchandise in stock? A. Yes, we do. That is our book work.

Q. And you prepare the orders to the sources or to the warehouses, is that right? A. That is right.

Q. And what type of work would be involved in doing that? You have to make entries in books, you have to use—

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A. That is right.

Q. (Cont'd) —calculating machines? A. Well, adding machines we use over there.

Q. Now, while Miss Witter was working for you—strike that out. I will ask another question first. Do the store manager and the assistant manager, Mr. Rumble and Mr. Brancato make any check on your work? A. Yes, they make the checks, uh huh.

Q. Are they personally examined, the records? A. That is right, before the merchandise—before the orders go out of the store.

Q. And from time to time do they look over your inventory records, too? A. That is right, they check the books.

Q. Now, in connection with any of those inspections by Mr. Rumble, did he ever make any complaint about Miss Witter's work? A. Well, he checks the merchandise the same as for anyone else that works up there, if there is any mistakes in them, of course, he always tells.

Q. If there are any mistakes, he calls them to your attention? A. That is right.

Q. And were there any cases in which he called to your attention mistakes that had been made by Mrs. Witter?

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A. Either Miss Witter as well as anyone else that worked up there, yes.

Q. Did he complain more or less or the same about her work would you say, or can't you say at this time? A. Well, he really never complained too much about any of our work anyway, never spoke too much about it.

Q. Were there any instances in which Mr. Rumble spoke to you and asked you to do something about errors in Miss Witter's work? And you said that you would take care of it or see about it? A. I believe he did just once.

Mr. Cavers: Now—

A. Just once on that.

Q. (By Mr. Dickson) What, if anything, did you do as a result of that complaint? A. Well, we usually made the correction onto it.

Q. Did you speak— A. I mean, I would call Miss Witter's attention to it.

Q. Now, were your other girls in the department there for a longer period of time than Miss Witter? A. Oh, yes, I have one other girl that has worked there longer.

Q. Now, would you say that Miss Witter's work as you said, I think, a temporary employee was as satisfactory as the other girls?

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A. Well, she had a chance to be with them steady, it probably would have been, but she was changed around too much.

Q. But, whatever the reason may be, it was not as satisfactory, is that correct or not?

Mr. Cavers: I don't think that is what the witness said.

Mr. Dickson: All right, let the witness say what she means. I will move to strike the answer then and ask the question again.

Q. (By Mr. Dickson) Was whatever the reason may be for it was Miss Witter's work as satisfactory as those of that of the other girls? A. Will you repeat that question, please.

Mr. Dickson: Would you read the question.

(Question read.)

Mr. Dickson: As the work of the other girls?

A. I think so, yes.

Q. (By Mr. Dickson) But, Mr. Rumble didn't think so, did he? A. Well, I mean, what he thinks I don't—

Q. Well, all you can judge, of course, would be what he said to you and what did he say? A. Well, as I say, he never said to me much about the work anyway up in the office there.

Mr. Dickson: All right. That is all.

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CHRISTIAN DONALD GUTMANN a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Dickson) State your name, please. A. Christian Donald Gutmann, G-U-T-M-A-N-N.

Q. And what is your residence, Mr. Gutmann? A. Livingston, New Jersey.

Q. What is your occupation? A. I am assistant New York personnel manager for Montgomery Ward and Company.

Trial Examiner: In other words, you are in the New York Regional Office, is that it?

The Witness: Yes, sir, that is right.

Q. (By Mr. Dickson) Stationed in—your office is in New York City? A. That is correct.

Q. And how long have you been with Montgomery Ward? A. Five years and eight months.

Q. During that time, what positions have you held? A. Originally, trainee and assistant manager in three different stores and my present job.

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Q. Were you ever employed in the Montgomery Ward, Binghamton, New York, store? A. Yes, I was.

Q. What was your position there? A. My first assignment was as merchandise assistant manager, that was from April of 1952 to January of 1953, following that I was operating assistant manager until April of 1954.

Q. Until what, what was that last date? A. April of 1954.

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Q. Do you recall an employee in the Binghamton store named Gladys Witter? A. Yes, I do.

Q. Did you have an occasion to observe Miss Witter's work while you were there? A. Yes, I did. She was an employee of the store during the entire time that I was there.

Q. What was her status or position? A. Well, Miss Witter was classified as an extra. She was used in numerous jobs throughout the store in both selling and non-selling activities.

Q. Did you have occasion to observe her work in those different activities? A. Yes, I did.

Q. Was she a satisfactory employee or not? What was your judgment of her? A. Well, she was an employee who had satisfactory qualities and unsatisfactory qualities. It is a question of the degree of one or the other.

Q. Well, will you elaborate on that in what respects was Mrs. Witter satisfactory and in what respect unsatisfactory? A. As to the satisfactory qualities, I would say that Mrs. Witter was willing to attempt a variety of jobs in the

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store. I qualify that by saying that occasionally she was unwilling to take on any given assignment that might come up, but in general she was willing to go from department to department as she was needed. She worked energetically as a rule.

On the other hand, I would say she was unsatisfactory in that she frequently approached the job with possibly too much energy and attended—and tended to make clerical errors in operating assignments, and might have tended to cause some confusion as a result of the sort of job she did.

Q. Now, you spoke of there being occasional instances in which she was not willing to undertake the job; do you have any specific instance in mind, any specific occasion or not? A. I can recall the general circumstances of one instance when I believe Mrs. Witter was working either in invoice records or the unit control office and I requested her to undertake some other job that morning. I don't recall the exact nature of the job, and as I recall, she replied that she was unwilling to attempt that job. She did not like it and she would not handle it. As I recall, I told her to make up her mind whether she was going to do it or not in the next half hour, approximately, and I'd say what we did after that. It was in the form of an ultimatum.

Q. Well, speak as nearly as you can what you said to her and what she said to you, the substance of it, if you can't

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recall the exact words. A. I think the outcome of the discussion was she went back to what she was doing without accepting the assignment I had requested her to undertake. However, I took no further action. Then a day or two later she was put on a different assignment again, so the matter was dropped.

Q. Can you specify the date or approximate date when this incident occurred? A. I believe it was sometime—

Q. When? A. I believe it was sometime in the early winter of 1954, but I couldn't say that for sure.

Q. Now, you spoke of one of her unsatisfactory qualities as being a tendency to make clerical errors: can you specify some instances of that which you know about? A. I would say some of those instances occurred when she was working in the invoice records department or in the unit stock control office. I believe she tended to work too fast and was probably somewhat careless in her work so that such arithmetical transactions as multiplication and addition were sometimes inaccurate. That resulted in considerable work to find the errors and correct them.

Q. Did you as operating assistant manager examine the unit stock control records from time to time? Was that part of your job or was that your job as merchandise assistant?

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A. As a merchandise assistant manager primarily. I might have occasion to look into those records as operating assistant, too.

Q. Well, do you recall any specific instances in which you found inaccuracies of the kind you described? A. I can recall them, but I can't recall them as to dates.

Q. Well, tell us what they were and if you can give an

approximate date. A. Well, sometime during the fall of '53, or possibly the winter of '54, Miss Witter, I believe, spent some time in the unit stock control office, also in the invoice records office, and my recollection is that the head of the unit stock control office, Miss Brewer, requested that Miss Witter be replaced or removed from that particular job.

Q. Was she replaced or removed as a result of that request or shortly thereafter? A. I believe she was, shortly thereafter.

Trial Examiner: When was this?

The Witness: I believe in the fall of '53 or the winter of '54.

Q. (By Mr. Dickson) Did you ever receive any criticism or comment from Mr. Rumble on Miss Witter's work? A. Yes, I did.

Q. What — A. On several occasions.

Q. Specify what it was and give the times as nearly as you can recall. A. Mr. Rumble told me on at least three or four occasions that he considered Miss Witter's work unsatisfactory in general, and that he wanted to replace her. I can recall one definite occasion during the winter of 1954 when he told me to release Miss Witter.

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Q. (By Mr. Dickson) Go ahead, what were the circumstances? What was said, and what were the facts? A. Well, that is about it. I told him I planned to do it. However, I didn't because some personnel problem came up in the store so that we needed Miss Witter's services in the particular department and I felt that it wasn't advisable to release her at that time.

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Q. When did you first become acquainted with Mr. Felker? A. When I first became—when I first came to the Binghamton store, April of 1952.

Q. What was his position at that time? A. He was Division 87 department head.

Q. And you were at that time, I believe, merchandise assistant manager, is that right? A. Yes.

Q. And what were your duties with reference particularly to Mr. Felker's division, if you had any? A. Yes, the review of basic merchandise lists with Mr. Felker, general supervision of his merchandising of the department, of

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his housekeeping, display work.

Q. Taking up first a review of the basic merchandise list, will you tell us what the basic merchandise list is? A. It is a record used in each selling division in Montgomery Ward's stores that contain pertinent information regarding each item that we carry in that division. We use it as a record to show such things as an on-hand position in a certain item or an on-order position what our needs will be.

Q. Does the department head keep that record, or is it kept in another portion of the store? A. The department head is responsible for inventorying his items and recording the counts in the basic list.

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Q. Now, in connection with the review of the basic merchandise list which has been mentioned, what is the purpose of that review, what are you seeking to accomplish? A. The main purpose is to determine the needs, needs of that particular department and to use the figures, put down

as a guide for the unit control office in ordering the merchandise, that is, writing orders. The review—to review his—the review is normally handled by the department head and the assistant manager or the store manager to provide a common basis for thinking on the subject.

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Q. Well, what did you find, if anything? A. Well, I found that on some occasions Mr. Felker's thinking in regards to his needs wasn't in conformance with the established company policy as to replenishment of merchandise.

Q. Well, try to be more specific as to what you mean. What specific policies are you referring to and in what respect did Mr. Felker differ from them? A. Well, purely as an example whereas we might normally expect to sell one or two of an item in a period of a month, Mr. Felker might anticipate needing six or seven.

Trial Examiner: It was a matter of judgment?

The Witness: It is a matter of judgment, and a matter of—it is a matter of judgment based on the preceding sales trend.

Trial Examiner: Well, am I mistaken—I am under the impression now that no matter what Mr. Felker thought about his needs, he was pretty well bound by your basic inventory control; that is, someone else set up a schedule which

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controlled his inventory in his department.

The Witness: Well, he was limited as to the amount of money he could spend, his open to buy was limited by figures prepared in the store and also in our New York office.

Trial Examiner: Is that item by item or over-all by the department?

The Witness: No, for the division in toto.

Trial Examiner: Lump sum?

The Witness: That is correct.

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Q. Now, at the time of Mr. Felker's return, I believe you were operating assistant manager, were you not? A. That is correct.

Q. Now, in that capacity, what relation did you have to Mr. Felker's work as department head? A. General supervision of his conduct as regards cash register procedure, sales check writing, housekeeping in his department, I would say that covers it.

Q. And did you continue to observe Mr. Felker in that respect up until the time you departed in April of 1954? A. Yes.

Q. What were your observations with reference to his conduct of his duties as department head during that period? A. His selling ability was very good, however, his duties particularly in regard to housekeeping, maintenance of displays were unsatisfactory. It is a Montgomery Ward requirement that—oh, selling departments within the store be maintaned in a clean, neat and orderly fashion by the department head or any people working for him, and—

Q. Go ahead. Did Mr. Felker meet that standard or not, if not, in what respects, in what details?

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A. He did not run a clean, neat and orderly department.

Q. Specifically what didn't he do? A. Specifically he

didn't do sufficent dusting. He didn't keep his merchandise bins filled properly and neatly.

Q. Did you ever criticize him in that respect? A. Yes, to the extent of pointing out the deficiencies and telling him to fill certain bins or to move certain displays, pointed out that certain areas of his displays needed dusting, that his cash and wrapping counter might have been littered, not might have been, but was littered with paper, sales tickets, something of that nature, and to get it cleaned up.

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Q. Now, what did, if anything, you observe about Mr. Felker's activities with regard to his displays or laying and relaying of them? A. Well, I found that Mr. Felker was reluctant to engage in display work. He required a maximum amount of prodding, reminding, suggesting, to get the work done within the time required. I occasionally found it necessary to help with the work and as I recall, Mr. Rumble engaged in display work in that department at times, too, in order to get the job done as required.

Q. Are you speaking of physical labor, of moving displays, is that what you are talking about?

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A. Moving displays, glassing counters, so-called, filling in merchandise.

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Trial Examiner: Did you send Mrs. Witter to see Mr. Felker in March of 1953 regarding his returning to work?

The Witness: Yes, I did.

Trial Examiner: Was that on your initiative or at the suggestion of Mr. Rumble?

The Witness: At the suggestion of Mr. Schofe at that time store manager.

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Q. (By Mr. Dickson) I will ask you whether or not as part of your duties while you worked in the Binghamton store, you had anything to do with the employee appraisals or ratings? A. Yes, I did.

Q. What was that, what was your procedure with particular reference to department heads such as Mr. McGraw and Mr. Felker? A. The procedure involved putting down numeral designations in regards to six or seven qualifications of a department head. This was done annually in the Binghamton store with omissions,

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I believe, from time to time through negligence or ignorance on the part of the assistant managers over a period of years.

Q. Can you at this time recall what ratings and the various factors involved you gave to Mr. McGraw and Mr. Felker respectively as of the end of 1953 in detail? A. I couldn't in detail. In general I can say that I rated Mr. McGraw in numerical equivalent of very satisfactory and Mr. Felker approximately over-all satisfactory.

Q. I will ask you whether or not the factor you made—let me show you a document which has been marked for identification and as Respondent's Exhibit 82, entitled "Retail Store Employee Appraisal" with the name Felker, F, at the top, and ask you whether or not you prepared that, the written portion of that document, the handwritten portion of that document? A. Yes, I did.

Q. Now, there are various factors stated there with ratings stated opposite and I will ask you whether or not

those ratings represented your judgment of Mr. Felker's ability in the various respects stated as of December 28, 1953 the date that that appraisal bears. A. Yes, the numbers do. This qualification that should a department head be marked as purely unsatisfactory the next step incumbent on the manager or assistant manager would be to release that person.

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Q. Yes. But, I don't believe there is any such respect which you marked Mr. Felker, is there? A. No, I didn't.

Q. Now, these numbers stated on—are on what scale—what scale were they? A. On a five scale ranging from poor to excellent.

Q. Now, there are stated at the bottom of this form and on the reverse side certain matters called appraisal factor definitions and appraisal rating definitions; will you state whether or not you used those as a guide in preparing your appraisal? A. Yes, I did.

Q. I will show you a document which has been marked Respondent's Exhibit 83 for identification, being the same form, but with the name "McGraw, J. M." at the top, and I will ask you whether or not you prepared that rating? A. Yes, I did.

Q. I notice that it has the name C. A. Rumble written on it, who wrote that down? A. I wrote that and added an initial after—"G" after it as it was customary at that time.

Q. Now, I will ask you whether or not the various ratings which you have placed opposite the factors as stated on Exhibit 83 represented your judgment on those factors as to Mr. McGraw at that time?

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A. Yes.

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Q. (By Mr. Dickson) Did you have occasion to request the department heads from time to time to work overtime, Mr. Gutmann? A. Yes.

Q. Were such requests made of Mr. Felker? A. Yes.

Q. When you were in the store, of course. And what was Mr. Felker's response to those requests? A. Mr. Felker was requested, for instance, to spend part of Monday evening in the store as was the custom with the other selling department heads for purposes of display work, inventory taking and so on. Quite frequently, would be unable to comply with a request like that because of the distance from the store to his home in Pennsylvania and to the fact that he generally had riders whom he was obligated to take to and from Pennsylvania and New York, that is Binghamton.

Q. Now, are you speaking of something that you knew or something he told you or what when you speak about his riders and so forth. A. Well, he told me that he had riders and it was my personal observation that people would occasionally drop by the store entrance or at closing time looking for Mr. Felker for a ride.

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Q. And was that ever given to you as an excuse for not staying overtime on any specific occasion? A. Yes.

Trial Examiner: Now, do you mean that you asked him directly to work overtime on certain Mondays and refused, and he refused, or do you mean that—

The Witness: He didn't refuse directly. He told me that it would be very inconvenient for him to work because of the circumstances.

Mr. Dickson: You may cross examine.

CROSS EXAMINATION:

Q. (By Mr. Cavers) Then the fact is that he never did refuse to work overtime? A. He had told me he would be unable to work.

Q. That is not the answer to my question. I said, the fact is that Mr. Felker never refused to work overtime. A. His reply was equivalent to a refusal.

Trial Examiner: No, that is not the question. Now, Mr. Gutmann, and it is an important question. Did you ever ask him, Mr. Felker, to work overtime and did Mr. Felker ever refuse such a request? That is simple enough.

The Witness: I would say yes, yes, he did.

Mr. Dickson: Isn't that a characterization of the language, Mr. Examiner? Shouldn't he be asked what Mr. Felker said rather than characterizing it as a refusal or not?

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Trial Examiner: All right. I will accept your suggestion, Mr. Dickson. Tell us what—tell us, Mr. Gutmann did you ever directly ask Mr. Felker to work overtime?

The Witness: Yes.

Trial Examiner: And did he ever refuse such a request to work overtime?

Mr. Dickson: Well, pardon me, Mr. Examiner—

The Witness: If I could explain.

Mr. Dickson: (Cont'd) —for repeating, but the point I was attempting to make was rather than characterizing what Mr. Felker may have said as a refusal or not, would it not be more proper to ask the witness what Mr. Felker said?

Trial Examiner: All right.

The Witness: Well, he would tell me that he couldn't work that particular night because of his obligations to his riders.

Q. (By Mr. Cavers) How many occasions did that occur? A. I would say at least four or five.

Q. And a period of how long? Those were the only occasions, four or five occasions that you can now recall, is that it? A. Yes, I stopped asking him.

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Q. Oh, now, then Respondent's Exhibit 82, Mr. Rumble was in agreement with the ratings that you gave Mr. Felker, is that right? A. I believe so, yes, I assume that he was.

Q. Now, a minute ago, you told me that Mr. Rumble was in agreement and now you tell me that you believe that he was in agreement, was he in agreement or was he not in agreement? A. He was in agreement.

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Q. I think you testified that Mr. Felker's thinking with respect to his needs didn't conform to the company policy, is that right? A. Yes, uh huh.

Q. What was Mr. Felker's thinking? A. Well, it was illogical.

Q. In what respect? A. That he would overestimate or underestimate his needs in—on frequent occasions.

Q. Well, can you give us some specific instances in which he overestimated his needs? A. I can't describe specific items, but I know there were

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items where the rate of sale was extremely slow and where

company thinking wouldn't justify our carrying those items.

Q. Well now, I want to know when he overestimated his needs. A. Well, that could occur on various

Q. I am not interested in when it could occur, I want to know when it did occur. A. I would say about every week.

Q. Every week? A. Every week.

Q. Now, how was this called to your attention, called to your attention each week? A. Yes; when I would review the basic lists either by myself or Mr. Felker.

Q. Do you review the basic lists each week with Mr. Felker? A. Yes, except that—except at infrequent intervals when Mr. Orman would review them with him.

Q. Well, what items did he overestimate his needs, on what items? A. Certain brooders.

Q. When did he overestimate his needs in connection with the brooders? A. During the late spring and summer of 1952. During—

Q. Was he ordering brooders in the late spring and summer of 1952? A. Yes.

Q. What do you mean, how did he overestimate them? Did he order too many? A. Yes.

Q. How many to many did he order? A. I don't know.

Q. What other than brooders? A. Tractor attachments.

Q. What kind of tractor attachments? A. I don't recall any specific items.

Q. Well, how do you recall then that they were tractor attachments?

Mr. Dickson: I object to the argumentative form of the question, if the Examiner please.

Trial Examiner: I will sustain it.

Mr. Cavers: Well, no. This man can remember the inadequacies of these two people on direct examination but he can't on cross. I submit I am entitled to go into this.

Trial Examiner: Yes, but it is a little bit on the argumentative side.

Mr. Cavers: All right.

Q. (By Mr. Cavers) What other than tractor attachments, what other items? A. Wagons.

Trial Examiner: Wagons?

The Witness: Yes, sir.

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Q. (By Mr. Cavers) When did he overestimate his needs on wagons? A. Sometime during 1952.

Q. Back in 1952? A. Yes.

Q. And when on the tractor attachments? A. I would say 1952 or 1953.

Q. When on the brooders? A. During 1952 and 1953.

Q. Did he ever overestimate his needs at any time during the year 1954? A. I don't know. I wasn't reviewing basics with him at that time.

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Q. Now, you testified that Mr. McGraw, Mr. Schofe was it— A. Yes.

Q. (cont'd) —made the offer to Mr. Felker to return to work? A. Yes, he did.

Q. Were you present at that time? A. Not when the specific words were spoken, no.

Q. When were you present?

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A. Well, I was present at discussions when it was decided to attempt to get Mr. Felker to return as Division 87 de-

partment head. I approached Mrs. Witter who knew Mr. Felker's whereabouts as an intermediary, to see him about whether he would be interested in returning or not.

Q. Well, before you had approached Mrs. Witter though, did you discuss this with the manager of the store, had you? A. Yes.

Q. And who was the manager at that time? A. Mr. Schofe, Max Schofe.

Q. Was it your considered judgment that he should take Mr. Felker back? A. Yes.

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Q. Now, if you had made out a retail store employee appraisal on Mr. Felker at the time you left the employ I think it was you left Binghamton in April of '54, would you have rated him higher than you did on Respondent's Exhibit 82? A. No.

Q. I thought you said he wasn't as bad any more? A. No, that wasn't my statement.

Q. What was your statement? A. I can clarify that if I may. The suggestions and directives to Mr. Felker declined in number because I personally felt that I wasn't accomplishing anything by repeating these directives and suggestions.

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Q. He only worked one night a week, didn't he? A. Mr. Felker was for a good part of the time on a little separate schedule from the department heads who lived in Binghamton nearer the store.

Q. What sort of a schedule was he on? A. When he was unable to work on a Monday night, he attempted to make up his time to get the required 44 hours a week by

coming in earlier, say, on a Tuesday or a Wednesday or possibly Thursday morning.

Trial Examiner: Would you try to keep your voice up a little bit, Mr. Gutmann.

The Witness: Yes.

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Q. (By Mr. Cavers) And had he had that arrangement with either you or Mr. Rumble? A. It varied considerably because the difficulties—

Q. Well, had he had— A. (Cont'd) —he experienced—

Q. (Cont'd) —had he had that arrangement with you or Mr. Rumble? A. It was a very flexible arrangement, but we had one—

Q. What do you mean by it was a very flexible arrangement? A. Because he frequently found that he wasn't able to get in on a certain morning because of the driving difficulties, or that he couldn't work a particular night because of the riders. That I mentioned before. He was not on a regular schedule in the sense that the other department heads in the store worked.

Q. Well, he didn't have to come to work then at 9:30 in the morning, is that your testimony? A. He was required to do that.

Q. Well, was he required to stay until the store closed also? A. Yes.

Q. Well, he then worked the same hours as the other employees, is that correct? A. Not always.

Q. Well, what do you mean "not always"? A. Due to these irregularities as to Monday nights and Tuesday and Wednesday mornings, there were occasions when he

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didn't have quite as—quite his required 44 hours. I recognized his difficulties and usually I saw to it that he received his full week's pay.

Q. Well, did you make other arrangements with Mr. Felker whereby he could come in at other times then? A. Yes, such as in the morning.

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Q. But, with respect to time putting in his time, so to speak, he did put in his required amount of time? A. Yes, with minor exceptions when road conditions or something of that nature might have prevented him from—

Q. How often did that occur? A. Infrequently. Very infrequently.

Q. Very infrequently?

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A. Yes.

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RE-DIRECT EXAMINATION:

Q. (By Mr. Dickson) * * *

Q. You have said that you participated in the discussions

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leading up to Mr. Felker's being asked to return in March of 1953, is that right? A. Yes.

Q. What reasons were decided upon by you and the store manager to take Mr. Felker back? A. Since Mr. Felker had resigned, Mr. Schofe and I had attempted to replace him with an experienced farming equipment department head. Our efforts began—they were intensified around the first of the year, the first of 1953. We had had no success in locating a man we considered fully qualified to run that sort of department. So that Mr. Felker's name was mentioned again as a possibility since he might return and we returned to him.

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LEONARD A. DuFOUR, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Dickson) State your name, please. A. Leonard A. DuFour, D-u-F-O-U-R.

Q. Where do you live, Mr. DuFour? A. 111 Oak Street, Binghamton, New York.

Q. What is your business? A. I am the department head for the appliances of Montgomery

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Ward in Binghamton.

Q. What division number or numbers is that? A. 62, 63, 68, 69 and 85.

Q. And those divisions together, constitute one department in the Binghamton store, do they? A. Yes, sir.

Q. Do you have anyone assisting you in that department, Mr. DuFour? A. What do you mean by "assisting"?

Q. Do you have any second people or salesmen? A. I have outside salesmen, yes, sir.

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Q. Now, you are familiar with the fact, I assume, that there was union organizational activity in the Binghamton store in 1954? A. Yes, sir.

Q. When did the existence of that organizational activity

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first come to your knowledge? About what date if you can state? A. To the best of my knowledge, in the spring

of the year, I would say May or June. I don't remember the exact date.

Q. Between that time and early in September of 1951, did you ever discuss the union with Mr. Rumble? A. No, sir.

Q. Did you ever discuss the union with Mr. Brancato? A. No, sir.

Q. Did you ever attempt to talk to Mr. Rumble about the union? A. I made a remark in standing in his office door one day and he asked me, would I please not discuss anything in the office or within his hearing, and if I didn't mind, would I please step outside into the public part of the store before I carried on any discussions as far as union activities went.

Q. And did you ever at any other time carry on such discussions? A. No, sir.

Q. In the presence of Mr. Rumble? A. No, sir, I respected his wishes.

Q. Did you ever attempt to discuss that subject with Mr. Brancato? A. No, sir, because I was informed shortly afterwards that management was not allowed to carry on any discussions, pros

or cons, on union activity?

Q. Who so informed you? A. I've forgotten whether it was Mr. Rumble or Mr. Brancato, but one of them informed me that they were not allowed to do it and they would appreciate it if I would not mention it, that some of my duties do take me up to the office in the store where other help do congregate.

* * *

Q. Did you ever hear Mr. Rumble discuss the union with other employees? A. No, sir, I have not. The only re-

mark I ever heard Mr. Rumble make was made at a personnel meeting in the store when he asked every employee to vote regardless of how they felt.

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Q. Now, you don't mind my asking, Mr. DuFour, you do have definite opinions about union matters, don't you? A. Very definite.

Q. All right. I won't ask you what they are, but you haven't hesitated to express them, have you? A. No, sir. As a free individual and a citizen of the

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United States and as an employee not connected with management of Montgomery Ward, I was as much entitled to voice my opinion against as they were for.

Q. May I ask you, did you vote in the bargaining election? A. I did, sir, and incidentally, to the best of my knowledge, my vote was not challenged—

* * *

CROSS EXAMINATION:

Q. (By Mr. Cavers) * * *

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Q. Well, did you give an affidavit to a field examiner of the National Labor Relations Board by the name of Thomas J. Walsh? A. Yes, sir.

Q. And in that affidavit do you recall telling him, I quote "I did have general discussions with employees about the store closing if the union won." A. I just answered that, sir. Yes, I did discuss it.

Q. Did you tell Mr. Walsh that? A. Yes, sir.

Q. And that when you told Mr. Walsh that, were you under oath? A. Yes—no.

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Q. Didn't you sign an affidavit? A. I signed an affidavit, but I was not sworn to to my knowledge.

Q. I have read the above statement of two pages and declared that it is true to the best of my knowledge and belief? A. That is true, I did sign that.

Q. And at that time, it was true to the best of your knowledge and belief? A. Yes, sir, uh huh.

Q. Now, you knew, did you not, Mr. DuFour, that both Frank Felker and Gladys Witter were active in behalf of the union? A. I know that Mr. Felker and Miss Witter both discussed union with me and from their conversations assumed that they were active in it, yes, sir, but if it was an assumption on my part, I was never told they were.

Q. Did you also see Mrs. Witter wearing her union button? A. Yes, sir, I did.

* * *

C. A. RUMBLE a witness called by and on behalf of the Respondent, having

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been previously sworn, was examined and testified further as follows:

Direct Examination:

Trial Examiner: You have been sworn, Mr. Rumble.

Q. (By Mr. Dickson) State your name, please. A. Clark A. Rumble.

Q. Are you the same Mr. Rumble as previously testified in this case? A. Yes.

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Q. (By Mr. Dickson) Mr. Rumble, I show you a document which has been marked Respondent's Exhibit 84 for identification and ask you if you have seen that before? A. Yes, sir.

Q. Did you receive that document which consists of a cover letter and an attached letter entitled "Labor Policy"? A. Yes, sir.

Q. From whom did you receive it? A. From R. H. Field, Regional Manager.

Q. Region 1 of Montgomery Ward? A. Region 1, Montgomery Ward.

Q. At or about what date did you receive that letter? A. About May 6, 1954.

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Q. Did you accept that letter and its contents as representing your company's policy on the subject of labor policy? A. Yes, sir.

Q. Have you received any other or different instructions on the subject of labor policy from any of your superiors? A. No, sir.

Q. I will ask you whether or not you have endeavored to follow the provisions laid down in that letter? A. Yes, sir.

* * *

Q. (By Mr. Dickson) I show you a document marked Respondent's Exhibit No. 81 purporting to be a copy of a form entitled "Department Head Rating by store manager and district manager"— A. Yes, sir.

Q. (Cont'd) —and ask you whether or not you have seen the original of the document? A. Yes, sir.

Q. Is the original of that document kept on file in your

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store? A. Yes, sir.

Q. Now, did you and your district manager, Mr. Levengood, prepare the appraisals which appear in the left-hand side of that document? A. Yes, sir.

Q. Now, under the rating column entitled "Over-All Rating" are certain figures, who inserted those rating figures there? A. Mr. Levengood.

Q. And at the bottom are initials and the date 3-17-51; I will ask you whether or not that was done on or about that date? A. It was done on that date exactly.

Q. And were those ratings inserted as a result of a conference between you and Mr. Levengood? A. Yes, sir.

Q. Did you agree to the ratings or not? A. Yes, sir.

Q. Now, in the next column entitled "Action", I will call your attention specifically opposite the word "Felker, F." to the word "Replace", who inserted that? A. Mr. Levengood put the "R" in there and I wrote the word "Replace" in here.

Q. I see. The large "R" was written by Mr. Levengood? A. Yes.

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Q. Is that right? A. Yes.

Q. And the word "Replace" was put in by you? A. Yes, sir.

Q. Was the "R" intended to mean replace? A. Yes.

Q. Did that represent a decision arrived at by discussion between you and Mr. Levengood as to that employee? A. Yes.

Q. And the judgment of each of you at that time, is that right? A. That is right.

Q. I show you a document marked Respondent's Exhibit 14 and I ask you whether or not that is a copy of a basic organization for your store? A. Yes, sir.

Q. I call your attention particularly to the entry op-

posite "McGraw, J." showing consolidation of Divisions 75, 76 and 87, and ask you whether or not you received any instructions to put that consolidation into effect? A. Yes, sir—

Q. From whom did you receive them? A. From the—prepared by the regional office and submitted to me by the district manager.

Q. In what form were they, in the form of a letter or of a

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new basic organization or what? A. They were in the form of a new basic organization.

Q. And I will show you the document which has been marked Respondent's Exhibit 15 and ask you whether or not that is the—that is a copy of the new basic organization made— A. Yes, sir.

Q. And under the setup in Montgomery Ward, were you required to make that change by your superiors? A. Yes, sir.

Q. And you did make it, is that right? A. Yes, sir.

Q. Who made the decision as to whether Mr. McGraw or Mr. Felker would be retained as the department head of the combined departments? A. That—the basic came through with Mr. Felker eliminated or cut off. Now, I could have protested and put Mr. McGraw—but—and put Mr. McGraw and Mr. Felker in place of Mr. McGraw if I saw fit. I could have protested and tried to get approval to do that.

Q. But, you did not see fit to do so, is that right? A. No, I—

tive merits of those two gentlemen as department heads, tive merits of those two gentlemen or department heads? A. Yes, sir.

Q. Did you have any knowledge as to any union activity by

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either of them at the time that decision was made? A. No, sir.

* * *

Q. (By Mr. Dickson) I show you this folder and contents which has been marked Respondent's Exhibit 85 for identification and ask you to state what that document is. A. This is B and X folder, it is a record of merchandise over six months' old and over a year old.

Q. In the Binghamton store? A. Yes, sir.

Q. For any particular division in that store? A. Division 87.

Q. And for what period of time?

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A. This was as of July 30th, 19—well,—

Q. If you can't answer— A. Yes, '53, here it is right here. October—July, July 30, 1953.

Q. Made—is the inventory made as of that time? A. Yes, sir.

Q. And does it bear entries for any other date or dates? A. It bears entries the count as of August, September, October, November and December.

Q. Of 1953? A. Yes.

Q. A new count was made each month, was it? A. Yes, sir.

Q. Now, is there any way that you can distinguish on this record between B merchandise and X merchandise? A. Yes, it is clearly marked in the classification column.

Q. And will you state what the age of X merchandise is? A. X merchandise is merchandise that is over one year old.

Q. At the time of taking the inventory? A. At the time of taking the inventory.

Q. And what is B merchandise? A. B merchandise is merchandise that is over six months old.

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Q. Now, I call your attention to the third page on this Exhibit on which there is a notation in red pencil "Make price on chain saws," do you know who wrote that? A. I did.

Q. Was that intended as a direction to anybody?

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A. Yes.

Q. To whom? A. Mr. Felker.

Q. And what did you want him to do? A. I wanted him to mark it down.

* * *

Q. I show you a document or folder which has been marked Respondent's Exhibit No. 86 for identification and ask you whether or not this is a similar B and X record in the Binghamton store? A. Yes, sir.

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Q. Is that also for Division 87? A. Division 87.

Q. For what period of time? A. This is inventory record of B and X as of January 31, 1954.

Q. And does it have entries subsequent to that date? A. Yes.

Q. On what dates or for what periods? A. Well, that was—your B and X position on hand as of 1-31-54.

Q. And is it carried forward then for subsequent dates? A. Yes, sir.

Q. How far? A. Four until liquidated.

Q. Well, this particular inventory covers a definite period of time, doesn't it, ends at a certain time? A. Well, until the next July, another inventory would be taken.

Q. So that this one would go up to July, 1954, is that right? A. That is right.

Q. And what you said about Respondent's Exhibit 85 applies to this one as well, as to the method of keeping it, is that right? A. That is right.

Q. Now, the bottom of the first page here, there is a notation

in red pencil "Know where your B and X is, Frank, know what it is and push it. $12,000 is exceptionally high." Signed "B", who wrote that down? A. Mr. Brancato wrote that.

Q. Now, will you look through this folder and see whether there are any other—any notations on it in your handwriting? A. Yes, at the top of the first page it is my notation.

Q. All right. Will you read that? A. "Frank, April is the time to unload. You got to sell B and X first," and my initials "R".

Q. Now, was that intended by you as instruction to somebody? A. Yes.

Q. To whom? A. Mr. Felker.

Q. And what did you intend to have him to do as a result of that instruction, what was the meaning of it? A. It means to sell it and get rid of it, sell it first.

Q. First before what? A. Before new merchandise.

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Q. (By Mr. Dickson) Would you look through Exhibit 86 and

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see whether there are any more notations in your handwriting? A. Yes, this one,—

Q. You are now looking at the fourth page of Exhibit 86? A. Yes.

Q. Will you read it. A. "Frank, this has got to go now." My initial "R".

Q. And does that designate any particular item of merchandise? A. No, it means all these particular line of merchandise, seasonal, weed kifler and grass killer and Weedone, it is very seasonal merchandise.

Q. Did you tell as of what date you made that notation? A. Oh, it was probably—it was in May. There is tha, column.

Q. And that likewise was intended as an instruction to Mr. Felker, is that right, Frank Felker? A. Yes.

Q. Do you see any other notations in there that you wrote? A. I made a note on—

Q. You are now looking at page 5? A. Five. I made a note for him to get—I was referring to trellises and I said "Get these on the floor."

Q. Meaning on the floor of the store? A. I mean on the sales floor.

Q. And do you know as of what time that notation was made? A. That was made in April.

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Q. Look further on and see if you see any other notations in your handwriting? A. I made a notation to him—

Q. You are now looking at page 6 of Exhibit 86; what does it say there? A. In May I wrote regarding lawn mowers, attachments, "Got to go now, Frank," and that meant he has got to sell it immediately. That is what—that is seasonal too.

Q. Likewise addressed to Mr. Felker, is that right? A. Yes.

Q. Look on further and see if you see any other notations in your handwritng. A. That is all the notations I made on this list, I guess.

Q. The cover has a notation on it, was that made by you or someone else? A. No, that is my handwriting.

Q. Can you read it? A. "Felker, we must get some action on B and N. Sell first, start counting May 15th."

Q. Does it have your initial at the bottom? A. Yes.

Q. Can you state the date or approximate date on which you made that notation? A. It was probably in May.

Q. Well, don't guess at it, if you don't know—

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A. No, I don't know.

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Q. (By Mr. Dickson) Do you know a Mrs. Hurst? A. Yes.

Q. Is she an employee of Montgomery Ward? A. Yes.

Q. Is there a Ruth Taylor who is an employee of Montgomery Ward at the present time? A. Yes.

Q. A Romano, a Mr. Romano who is an employee now?

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A. Yes.

Q. I believe you referred to Bishop, is he no longer employed? A. That is right.

Q. He left? A. That is right.

Q. Mr. Summers is employed, is he now? A. Yes.

Q. Is Mrs. Boone employed now? A. Yes.

Q. Is Mrs. Harrison employed now? A. Yes.

Q. Is Mrs. Andrews employed now? A. Yes.

Q. Is a man named DeAngelis employed now? A. No, he left.

Q. Did he leave voluntarily or otherwise? A. Voluntarily.

Q. And Mr. Siedlecki, is he employed now? A. No.

Q. Did he leave voluntarily or otherwise? A. Voluntarily.

Q. Now, did you at the time at and before the union election or do you at the present time know whether any of the employees to which I have just referred were or are members of any union?

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A. No.

Q. Do you know whether Mrs. Witter was or is a member of a union? A. No.

Q. Have you noticed whether or not Mrs. Witter wore or wears a union button? A. No.

Q. You haven't noticed it, is that your answer? A. I didn't—never seen it, no, sir.

Q. Do you know whether or not Mr. Felker was or is a member of a union? A. No.

Q. You mean you don't know? A. I don't know, no.

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JOHN CARL BRANCATO a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Dickson) Would you state your name, please. A. John Carl Brancato. B-R-A-N-C-A-T-O.

Q. Where do you live, Mr. Brancato? A. 109 Oak Street in the city.

Q. In this city? A. That is right.

Q. What is your position? A. Assistant store manager of the Binghamton, Montgomery Ward branch.

Q. How long have you held that position? A. Since September 8 of 1953.

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Q. Were you acquainted with an employee of the Binghamton store named Gladys Witter? A. Yes, I was.

Q. What was Mrs. Witter's position with the store? A. She held various positions. I couldn't locate her in one particular division for you. She was an extra.

Q. She was what? A. An extra.

Q. What do you mean by an "extra"? A. She was non-basic, basic employee.

Q. When can the store hire and when can it not hire extras, is there any rule in that respect? A. Yes, there has to be earned allowances if the employee is intended for selling position, and if it is for a non-selling position there has to be an allowance granted by the district manager.

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Q. Did you—was Mrs. Witter an employee of the store during the entire time you have been there up to her release last August? A. Yes.

Q. Did you have occasion to observe her work? A. Yes, I did.

Q. Will you state briefly what type of employee she was and whether her work was satisfactory or unsatisfactory and in what respects. A. I would consider her work unsatisfactory in respects that in non-selling capacities she

was inaccurate about which I had numerous complaints, and numerous occasions to observe her myself, and her selling capacity, she was also inaccurate and incomplete in her work. She would attempt a job and very often not finish it.

Q. Can you give us some specific instances of her unsatisfactory work in the non-selling capacity? A. Yes, she had worked in the catalog department during the time that I was in the store, particularly during the time that I took over the operations of the store since the assistant that was at the store at the time had left.

Q. That is Mr. Gutmann, is it? A. That is correct. I noticed a number of deficiencies in her order writing.

Q. Let me—while you are on that point, let me show you

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Respondent's Exhibits 1, 2, 3, 4 and 5 of which Mrs. Witter has testified were written by her and ask you whether those exhibits are properly written, and if not, in what respects they are improper, starting with Respondent's Exhibit 1. A. It is incomplete which results in expense and possibly loss of a sale.

Q. Specifically in what respect is it incomplete? A. Lack of the phone, if there is no phone it should have been so noted.

Q. What is the purpose of noting a known number on the catalog order? A. Expedite delivery of the merchandise after it is received in the store by calling that that has been notified.

Q. All right. Is it incomplete or inaccurate in any other respect still referring to Respondent's Exhibit 1? A. Yes, the color finish and so forth, blocks are missing.

Q. I note that Respondent's Exhibit 1 covers a wood picket fence, is it necessary to fill in the color section on which on such an item? A. Yes, it is.

Q. Why? A. For the simple reason that Albany receives probably hundreds of thousands of the duplicates of this order which have the description of the item and in filling them they care not what the item is, all they are interested in is the

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size and color and article number. Without having it there, it is very probably, or I should say possible, I will qualify that a little better, that that entry sheet would be returned, noted by an order writing error, that would result in possibly the loss of a sale at least a lot of delay.

Mr. Cavers: I object to this as the possibility of what would happen. I think we are interested in what did happen.

The Witness: Well, I—

Mr. Cavers: I don't think there are—there are many possibilities.

Mr. Dickson: Well, I think it is obvious, of course, that the witness can't either state what did happen to this particular item nor can he speculate on possibilities. If it is a probability, why, I submit that that would be a reasonable—

The Witness: Well, I do know that we have had them come back for similar reasons.

Mr. Cavers: Well, Mr. Examiner, the Counsel is asking the witness about a specific document, a specific exhibit, and I think the witness's answer should be limited to that specific exhibit.

Trial Examiner: Well, it is a little difficult to rule on your objection, Mr. Cavers.

Mr. Cavers: I will—

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Trial Examiner: His testimony is that this par-

ticular order or Respondent's Exhibit 1 is incomplete in at least two respects that he has noted and if I understand the import of the pending question it is, why is it incomplete, because of the color finish, that isn't there, and he is simply stating as you have aptly pointed out what might have happened or what might happen in a similar case. I think I will permit him.

Q. (By Mr. Dickson) Let's go on to Respondent's Exhibit 2 is that correct, or incorrect, and if it is incorrect, in what respect? A. Similar mistake on the phone number, omission, I should say, size and color.

Q. This is described as a spike-tooth harrow, is it an essential part of the order or a proper part of the order to include size and color on such an order? A. If there is no size or color indicated, it should be marked with an X to let the filler in Albany know that there is no size or color needed. Offhand I don't know if I were filling the order I would return it for an order writing error myself.

Mr. Cavers: I move that that be stricken as to what he would do is immaterial.

Trial Examiner: Yes, that may be stricken.

Q. (By Mr. Dickson) Have you had any experience in which

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orders with blanks like that for similar items have been returned to the Binghamton store? A. Yes, I have.

Q. I direct your attention to Respondent's Exhibit 3 and ask you whether that is correct or incorrect and if incorrect in what respects? A. Similarly the phone number and color missing.

Q. Respondent's Exhibit 4 the same? Size and color missing? A. That is correct.

Q. Respondent's Exhibit 5 the same? A. This doesn't have a phone number, but it is not necessary on this particular type of order since it goes direct to the customer and we have no notification involved. The amount received of order, the figure is omitted, which means that the customer did not get a receipt of paid receipt.

Q. Now, it has been testified here by Miss Witter in substance, sir, as I remember it that she probably wrote on the original of this customer's receipt the amount received with order after taking the cash—after taking the carbon out, can or should the order be written in that fashion? A. It can, but it shouldn't.

Q. Why not? A. Well, for the simple reason that this is a duplicate and should be an exact copy of what we have given the customer.

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Q. (By Mr. Dickson) I call your attention to the fact that on Respondent's Exhibits 1, 2, 3 and 4 the station taken by is followed by "Julian", although it has been testified here that those orders were written by Mrs. Witter; did you at the time that those orders were written have any rule with respect to that? A. There is a standard company rule that any sales person making the sale is to take the sale themselves.

Q. Had that rule been promulgated to your catalog desk prior to this time, do you know? A. Well, let me say this: I had no knowledge of this being done in our catalog department.

Q. Who was the head of your catalog desk prior to August, 1954? A. Mrs. Julian was there up until June 10th.

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Q. 1954? A. That is correct.

Q. Did Mrs. Julian ever have anything to say one way or the other as to Mrs. Witter's work in the catalog order department? A. Yes, she did.

Q. What did she say? A. She complained about her inaccuracy.

Q. Writing orders, you mean? A. That is correct.

Q. Mrs. Witter, I believe, worked for Mrs. Marold in the hosiery department at certain times, did she not? A. Yes, she had.

Q. Did Mrs. Marold ever have anything to say about Mrs. Witter's work? A. Yes, she did.

Q. What did she say? A. She complained about the way she stocked the merchandise on top of the counter by mixing of sizes and not piling them neatly.

Q. Did that happen on one occasion or more than one occasion? A. She only spoke to me once.

Q. Did you ever receive any report with regard to Mrs. Witter's work on the switchboard? A. Yes, I did.

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Q. From whom? A. I believe it was from Mrs. Bernice Murray.

Q. What did she say with reference to Mrs. Witter's work? A. She had inaccuracies in her tabulation of cash office documents.

Q. That had to do with running tapes, did it not? A. Register tapes, that is right.

Q. Not the switchboard work itself? A. Oh, no.

Q. Are there any other instances in which you received any reports either complimentary or uncomplimentary about Mrs. Witter's work that you can specify at this time? A. No, I cannot recall anything.

Q. Now, I call your attention to Respondent's Exhibit 26 which is a photostatic copy of the weekly payroll report of the Binghamton store for the week ended August the 11th, 1954 and ask you whether or not that report shows any allowable payroll for extra employees? A. It does. It shows $120.

Q. Is that what you spent or what you were entitled to spend? A. That is what we spent.

Q. Was there an overage or an underage as far as what was allowable to you for that purpose? A. There was an overage of $111.

Q. Are we talking about the commission departments now, non-

commission departments? A. Non-commission?

Q. Yes. Did you receive any instructions from Mr. Rumble or from any other person in the company concerning any acts to be taken as the result of that overage? A. Yes.

Q. What instructions did you receive? A. We were to get down to the regular basic organization until such times we had earned allowances.

Q. Who gave you that instruction? A. Mr. Rumble.

Q. And about what date can you state that you received it? A. I cannot give the exact date. It was just about this time, probably a day after.

Q. The day after the date of this which would be August 11, 1954? A. Yes.

Q. Have you given now the substance of the instructions Mr. Rumble gave you, was there any more? A. That was the extent of it.

Q. And did he leave to you the method of determining how the payroll was to be reduced? A. No, I believe we discussed it together.

Q. All right. And what conclusion did you arrive at as a result of that discussion?

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A. That Mrs. Witter would have to be released.

Q. Was that—what criterion or—well, what criteria did you take into account in determining which of the extra employees were to be released? A. Well, a number of factors, Mrs. Witter had in our opinion an unsatisfactory performance as compared with other personnel in her similar—in her situation, and the other employees on her basis were in particular departments where they excelled quite well.

Q. Did you take into account the question as to whether the extra or extras to be released were working full or part time? A. Oh, yes.

Q. Well now, how many extras, extra employees were there in—if any, who were working full time at that time? A. I believe there were about three.

Q. Can you state who they were? A. There was Mrs. Treible on the fashion floor who had been there permanently. She had never moved to another department. Mrs. Carr and Byron Moore.

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Q. (By Mr. Dickson) Was Mrs. Witter a full-time or part-time extra? A. Full-time.

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Q. So that made four altogether to the best of your recollection? A. Yes, sir.

Q. Mrs. Carr you spoke of is Anna Carr, is it not? A. That is correct.

Q. Now, you had in addition to those four full-time extras, some part-time extras, did you not? A. That is correct.

Q. Now, did you make a decision as between full-time and part-time to be cut off the payroll? A. Yes.

Q. First. And you decided on full-time, is that it? A. That is correct.

Q. Why, did you make that decision, you and Mr. Rumble? A. Part-time employees are only used during peak business days or periods such as Thursday evening and Saturday. To reduce them from the payroll would be reducing sales which is definitely not what we are in the habit of doing at least if we can help it. A full-time extra spends the slack days on our payroll which we thought would be the most beneficial time to reduce.

Q. Because of—well, I think you stated, so you determined, did you, that the choice lay among the four full-time extras? A. That is correct.

Q. And on what basis did yor choose among them?

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A. Well, Byron Moore was definitely out since he was doing mail work, Mrs. Trieble had been on the fashion floor as I said and had never been moved from it to the best of my knowledge. She was satisfactory, very satisfactory on the fashion floor; Mrs. Carr was on the same floor as Mrs. Witter, however, her work was far more satisfactory than—according to our standards.

Q. Did you take into account any criteria of any kind other than quality of the work that was being performed of those four people? A. Yes, at first we had discussed the possibility of laying Mrs. Witter off in order to get down to basic, and due to her personal affairs, why, we decided that her complete severance would be a lot better.

Q. In what personal affairs of Mrs. Witter's did you take into account in reaching that conclusion, what information had you received on that point? A. Mrs.

Witter was divorced and had a child to support and in all probability it would be very difficult for her on a part-time basis or with spasmodic layoffs.

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Q. (By Mr. Dickson) So you reached the conclusion that you would remove Mrs. Witter, is that right?

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A. That is correct.

Q. At that time, did you have any knowledge one way or the other as to whether any of the persons you mentioned were or were not active in the union? A. No, I did not.

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Q. And did you call Mrs. Witter to the office or where did you see her? A. I saw her in the office.

Q. And was anyone else present besides you and Mrs. Witter? A. No, there wasn't.

Q. What did you say to her and what did she say to you? A. I told her I was very sorry that I had some very bad news, but due to our recent overage in payroll that we would have to let her go because she was non-basic.

Q. Was that the substance of what you said or was there anything else?

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A. That would be the extent of it.

Q. What did Mrs. Witter say, if anything? A. As I remember Mrs. Witter got very angry at the situation and I believe she said she was going to take it up with the union.

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Q. I will ask you to look at Respondent's Exhibits 27 to 46 of which are the weekly payroll reports subsequent

to August 11th and ask you whether or not subsequently you had allowable funds available for extra payroll? A. Yes, we did all but for two weeks.

Q. When were those two weeks? A. The week ending 12-15-54 and the week ending 12-22-54.

Q. I will ask you with particular reference to the month or so following Mrs. Witter's release; that is, up to the—about the end of September, 1954, whether those allowables arose by reason of increase in sales, reduction in employees or some other reason or a combination, just cover that period of time? A. I would say largely due to increased sales although some weeks we were very close to our earned allowance.

Q. Was increased sales the principle factor, is that your

answer? A. Yes.

* * *

Q. (By Mr. Dickson) Now, turning to Frank Felker, you were acquainted with him as department head of Division 87, were you not? A. That is right.

Q. And when did you first become acquainted with Mr. Felker? A. Shortly after my arrival to Binghamton.

Q. That was about what time? A. September of 1953, September 8th.

Q. And did you have any supervisory duties with reference to Mr. Felker during the remainder of that time? A. Yes, I did.

Q. What was your observation of Mr. Felker as to whether he was or was not a satisfactory Division 87 department head? Be specific in your answer. A. I drew no conclusions immediately since we were going into the toy relay, I first really became aware of Mr. Felker's ability in the spring of the following year, early spring.

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Q. And what did you observe at that time? A. That Mr. Felker professed to be cooperative and when the work came to be done he would not be as cooperative as he said he would be.

Q. Now, are you speaking of work to be done during the regular working day or work to be done as overtime? A. Well, either.

Q. Either? A. Or both.

Q. Taking up first overtime work, did you request Mr. Felker to stay overtime at any time? A. Yes, I did.

Q. And did he? A. He had stayed a few times, but the majority of times he had riders to take back to his home in Pennsylvania.

Q. That was the answer he gave you was it? A. That is correct.

Q. And did he state whether he was or was willing to stay or what was his attitude or his reply? A. Well, he said that he couldn't because of the riders—riders in his car which lived in his area going with him.

Q. Now, what about Mr. Felker's work during the working day, what was your observation of that? A. He was—had a good knowledge of the equipment as far as selling ability is concerned, however, his housekeeping and

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merchandising was of a poor caliber I would say.

Q. Specifically, what do you mean by his housekeeping was poor? A. Well, his department was not well stocked. He was prone to selling from the top of the counters and not filling them up immediately, leaving holes in the displays which is not very eye-appealing as far as the customers are concerned, and the dusting was not up to par.

Q. What about the merchandising? A. Mr. Felker had the ability to sell the merchandise. However, to replace it is another story. He would very often either over-buy or under-buy in replacing the items that had been sold.

Q. I call your attention to a document marked Respondent's Exhibit 86 for Identification which is a folder captioned "B and X Liquidation Record" and ask you whether you have seen that before? A. Yes, I have.

Q. Does that cover Division 87 in the Binghamton store? A. For B and X classified merchandise, yes.

Q. What time or period of time does that exhibit cover? A. From January 31, 1954 through July 31, 1954.

Q. Did you have any part in the preparation of that exhibit? A. Yes.

Q. What part did you have?

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A. Well, I super—well, assisted Mr. Rumble in supervising the inventory and I believe this is my writing on the first two lines, on the first page, and giving instructions on how to list the merchandise.

Q. I see. Now, I call your attention to a notation in the lower left-hand corner of the first page reading "Know where your B and X is, Frank, know what it is and push it. $12,000 is exceptionally high." B. Did you write that? A. Yes, I did.

Q. Was that intended as an instruction to Mr. Felker? A. That is correct.

Q. Can you state the date or approximate date on which you made that notation? A. This notation was made prior to his first count. I do believe—it would have—it would have been in the forepart of February of 1954.

Q. I call your attention to a notation in red pencil

in the lower left-hand corner on page 2 of this exhibit reading, "Be sure your B-3 carryover is sold first—" underlined "—we must liquidate." signed "B", is that your writing? A. Yes, it is.

Q. Was that likewise intended as an instruction to Mr. Felker? A. Yes, it was.

Q. Can you state the date approximately on which that was

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written? A. That notation was made at the same time as the one on the first page, I went through his B and X all at one time.

Q. On the third page is a notation in red pencil in the lower left-hand corner, "Rotate your stocks, keep the old merchandise on top or in front." Signed "B", is that your writing? A. Yes, it is.

Q. Was that made at about the same time? A. Yes.

Q. On the 5th page appears a notation in the lower left-hand corner in red pencil, "Get a display of these trellises set up," signed "B", is that in your writing? A. Yes, it is.

Q. Intended also as an instruction to him? A. That is correct.

Q. Now, what were you referring to there? A. These trellises had been stored in the stockroom and I wanted Mr. Felker to get his old merchandise out of the stockroom and on the sales floor to be sold before the new merchandise was received and put on for sale.

Q. Was that notation made at about the same time as the previous one? A. Yes, it was.

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Q. On page 6 of this exhibit appears a notation in the lower left-hand corner in red pencil, "You have some

repossessed merchandise in this classification—"GET RID OF IT—TAKE 15% OFF THIS MONTH AND 10% EVERY MONTH AFTER UNTIL SOLD," signed "B", did you write that? A. Yes, I did.

Q. Was that likewise intended as an instruction to him? A. That is correct.

Q. Was that made at about the same time? A. Yes, sir.

Q. What was the repossessed merchandise to which you referred or the classification to which you referred? A. He had a tractor and some other farm equipment that had repossessed in the tractor line of merchandise.

Q. On the lower left-hand corner of page 8 of this exhibit is the notation in red pencil, "Are all these fences complete—if not, get the parts immediately so when July rolls around we are in a position to move them," signed "B", did you write that? A. Yes, sir.

Q. As an instruction to Mr. Felker? A. That is correct.

Q. At about the same time? A. Yes, sir.

Q. What fences are you referring to?

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A. Those are fencers.

Q. Oh, fencers, I misread it. What are fencers? A. Electric fencers.

Q. I guess maybe I would like to know what electric fencers are? A. They are used to electrically charge fencing in fields to keep cattle from going astray.

Q. On the next page there is a notation of, "Get some Division 70 tires and mount on a setup wagon—that's the way to make them go—sell with tires if customer requests," signed "B", did you write that? A. Yes, I did.

Q. As an instruction to Mr. Felker? A. Yes, sir.
Q. At about the same time? A. Yes.

* * *

Q. (By Mr. Dickson) What wagons are you referring to there? A. These two right here (indicating).
Q. Right above the writings?

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A. That is right.
Q. And likewise with this notation over here on the fourth page from the back, "I am afraid we will have to give these dogs away, take progressive M. D.'s as indicated," signed "B" the same is true, isn't it? A. That is correct.
Q. What are the "dogs" you are referring to? A. The two mall chain saws just above the writing.
Q. How old were they? A. I don't—I don't know their actual age. I know they are—well, right here it tells that they were X.
Q. Meaning they were over one year, isn't that right? A. That is right, and that they were discontinued, we no longer carried those.
Q. And also—by M. D.'s you meant markdowns, did you not? A. That is correct.
Q. Here is an unsigned notation in red pencil on the next page underlining a snow plower "Too heavy" and there is something else, would you read it? A. "Fits plow or power trac tractor".
Q. Did you write that? A. Yes, I did.
Q. What is the meaning of that? A. This snow—I believe it is written plower is actually a snow blower, and it is not a good item for this particular area because the snow is too wet and it invariably comes back

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when it has been sold for a refund.

Q. And there is a notation down at the bottom "Push that 5634—it has been returned, hasn't it?" signed "B". Now, that refers to the same item, doesn't it? A. That is correct.

Q. Now, there is a notation on the last page reading as follows: "Frank, are you sure you have four number 2329? We've got to get rid of them through progressive markdowns. By next fall they should be at rock bottom. Carry only one—" what comes next there? A. "Man."

Q. (Cont'd) —"Man-2 M. G. saws." Signed "B", you wrote that at about the same time, didn't you? A. That is right.

Q. Would you explain that instruction. A. These were the discontinued chain saws that we no longer carried and they normally did not sell at a fast rate of sale. The model 2 M. G. was a far better saw and we had far less trouble with it.

Q. Were you instructing him to stock different types of saws, is that it? A. We carried this 2 M. G. also, but in lower quantities because we had the excessive carry-over in the five and seven man.

Q. Well, did the fact that you were carrying these older

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saws have anything to do with the number of new saws you could stock? A. Yes.

Q. It affected your open to buy, is that right? A. That is correct.

* * *

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Q. Did Mrs. Hurst on one occasion ask you why Mr DuFour could talk about the union the way he did? A. Gee, I believe she did.

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Q. Can you fix the time and place of that question? A. I can fix the place, it was on the main floor, but I don't believe I can fix the time of it.

Q. Well, with reference to the union election, was it before that election or after, can you say? A. I couldn't.

Q. And what reply did you give Mrs. Hurst? A. That that was his business.

Q. What he said was his own business? A. That is right.

* * *

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Mr. Cavers: In an off-the-record discussion, Counsel

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for the Respondent has agreed to stipulate that this letter, General Counsel's Exhibit 14, was received by Mrs. Witter in response to a letter that the —that she had written a short time before to Mr. Orman a former manager of the Respondent's store in Binghamton, Mr. Orman at the time the letter was written was the store manager in Salisbury, Maryland.

Mr. Dickson: I am sorry, I didn't hear that. Would you read it, Mr. Reporter.

(Statement of Mr. Cavers read.)

Mr. Dickson: Mr. Examiner, I will agree to stipulate that Mrs. Witter would so testify. I have no knowledge on the matter.

* * *

CROSS EXAMINATION:

Q. (By Mr. Cavers) * * *

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Q. Now, I show you then Respondent's Exhibit 27 and that bears the date of August 18th, is that right? A. That is correct.

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Q. And this was prepared when, that date, August 18th? A. It was begun on that date and completed on the following day.

Q. Completed on August the 19th, is that right? A. That is right.

Q. And that shows that they were under $167, is that right? A. No, that is the allowance that we earned that week. We spent $121 leaving a difference of $46.

Q. So you were under that week $46? A. That is correct.

Trial Examiner: What does that mean? Were you in a favorable position that you had $46 that you could have used and didn't?

Mr. Cavers: Yes.

The Witness: That is correct, in allowances.

Q. (By Mr. Cavers) Now, I believe in reference—I show you Respondent's Exhibits 1 through 5; I believe in reference to those exhibits you stated in answer to a question by Mr. Dickson that because they were incomplete they caused expense to the company? A. That is right.

Q. Now, what expense was—in what way did the incompleteness of Respondent's Exhibit 1 cause an expense to the company? A. To begin with, if the merchandise were received from Albany—

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Q. Well now, you look at Respondent's Exhibit 1. Was the merchandise received from Albany? A. Yes, it was.

Q. All right, now, you go ahead. A. The phone number missing would necessitate going through the phone book to see if the customer had a phone number to call. If they didn't, why then, the card would have been used, but it should have been noted if there was no phone that they should be notified by card thus saving that time.

Q. Do you know whether or not somebody did have to go through the phone book? A. No, I don't.

Q. So you don't know whether or not there was any expense connected with Respondent's Exhibit 1 or not? A. That is correct.

Q Now, with respect to Respondent's Exhibit 2, I ask you in what way that caused expense to the company? A. In the same manner.

Q. Do you know— A. I am not saying it did.

Q. Well, then your testimony now is that you don't know whether the omissions or the incompleteness of Respondent's Exhibits 1 through 5 did in fact cause an expense to the company? A. That is correct.

Q. What color are wood picket fences?

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A. White or red, generally white.

Q. Did you ever see a red one? A. They are a dull barn red. They use them generally for snow fences.

Q. They don't call them picket fences, do they? I am referring to Respondent's Exhibit 1, 97-95-M, that type of a picket fence, do they have any colors other than white? A. I would say not in sections.

Q. I show you Rsepondent's Exihibit 2, "spike-tooth harrow for a 1½ horsepower motor" does that come in any more than one color? A. I don't believe it does.

Q. And the descriptions written on Respondent's Exhibit 2 could only mean one size, couldn't it? A. It may

have other size teeth. What I am saying is I don't know, and neither does the person that fills the order in Albany.

Q. The same way for the picket fence you would give the same answers with respect to Respondent's Exhibit 3? A. That is right.

Q. And what was wrong with Respondent's Exhibit 4? A. As I say, size and color missing.

Q. Luggage carrier, do they have more than one color? A. I don't believe it does.

Q. More than one size?

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A. Possibly.

Q. Do you know whether there is more than one size? A. No, I don't.

Q. Respondent's Exhibit 5, what is wrong with that? A. No amount received with order on the blank that is noted.

Q. Now, I think you testified that there was a certain rule promulgated with respect to the catalog department? A. Of the entire store including the catalog department.

Q. What was that rule? A. That any sales person making a sale was to take the sale themselves.

Q. How was that rule promulgated? A. Any time we observed any switching of sales between sales people—

Q. You call whenever it was done, you call it to their attention? A. That is correct.

Q. But there was no general promulgation of any rule? A. No, I don't believe we ever had a meeting on it.

Q. You said that the company had discontinued carrying chain saws. A. Of that number.

Q. Now, I believe you also testified that with respect to Mr. Felker's BX over a period of time his X inventory dropped

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how much? A. Approximately?

Q. Approximately. A. 50% on X and 75% on B.

Q. Well, over that period of time that was a pretty good drop, wasn't is, Mr. Brancato? A. Not according to the company standards.

Q. What is the company standards, 100%? A. That is correct.

Q. Do you have any department in your store that dropped that much during that period of time? A. Yes, in some classifications, in some departments.

Q. I am speaking to a whole department over that same period of time that dropped any more in their B and X than Mr. Felker's. A. I don't feel I am qualified to answer that, sir, without records.

Q. Do you have any department in your store that doesn't have any B and X inventory at all? A. I have had, yes.

Q. That has no B and X inventory at all? A. That is correct.

Q. What department? A. I don't know offhand without records.

Q. I think in answer to a question by the Trial Examiner as to how many outside salesmen that Mr. DuFour had during the

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union activity in the store, that he had two, didn't he at that time have three salesmen? A. Well, I added that afterwards.

Q. I am sorry. A. At one time he had three, but I couldn't place that time.

Q. Well, an outside salesman would ordinarily work outside one day and inside the next, wasn't that generally the way they worked it in the appliance department? A.

Well, it may not have been on that same arrangement, it was staggered. They might work two days outside and three days inside, or three days inside ond two days outside.

Q. Now, if Mr. Felker ordered a certain quantity of merchandise when that—before that order left the store, it was reviewed, was it not, by either you or Mr. Gutmann or Mr. Rumble? A. Yes, it may not have been the order itself, the quantity, however, should have been reviewed at one time or another.

Q. In other words, what he ordered, the quantity and the individual items that he ordered or that he requisitioned, let's use that term, would be reviewed before the order left the store? A. That is correct, it should be.

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IRENE GLADYS WITTER was re-called as a witness by and on behalf of the General Counsel, having been previously sworn, was examined and testified further as follows:

Direct Examination:

Q. (By Mr. Cavers) At any time that you worked in Montgomery Ward's store, did Mr. Gutmann ever criticize your work? A. No, sir, he did not.

Q. At any time that you worked for the store, did Mr. Gutmann ever criticize your selling methods? A. No, sir, he did not.

Q. At any time that you worked for the store, did Mr. Gutmann ever praise your work? A. Yes, he did.

Q. When? A. In particular when I was in the toy department at Christmastime, perhaps we would make a nice display of something, he would come down, he would

comment you on the counter how nice it looked, he thought you were doing a good job.

Q. Did he do that on an occasion? A. Oh, yes, on several occasions I would say during the time that they were setting up the toy deparement.

Q. Approximately when was that?

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A. Well, that would be between—I would say October and December. That is when our toy department was in effect.

Mr. Cavers: No further questions.

Mr. Dickson: No cross examination.

(Witness excused.)

Mr. Cavers: Mr. Felker.

FRANK FELKER was re-called as a witness by and on behalf of the General Counsel, having been previously sworn, was examined and testified further as follows:

Direct Examination:

Q. (By Mr. Cavers) During the time that your—that you worked for Montgomery Ward, did Mr. Gutmann ever criticize your work, Mr. Felker? A. No, sir.

Q. Did he ever criticize your selling methods? A. No, sir.

Q. How often during 1953, did Mr. Gutmann come down into your department? A. Every day, sometimes three or four times a day.

Q. Would he come down to talk to you on those occasions? A. Not necessarily to talk to me, no.

Q. Did he ever do any work in your department? A. Very little.

Q. During 1953, how many times in a week would he

come down

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there to do work in your department? A. In '53?

Q. Yes. A. The only time in '53 that Mr. Gutmann did any work in my department during working hours, not extra time hours, during working hours, was when we were putting back farm equipment after the toy department had been moved out and had relieved all of the help in the toy department, just throwed all the work on me, being the 87 man to put my merchandise back in.

Q. And when was this? A. That was right around the first of the year of '53, December—that would be '54, of course, January.

Q. Did he ever come down and help you in your department during the year of 1954 other than that? A. Not to my recollection, not during working hours.

Q. Did you ever hang your sales slips on the side of your cash register? A. No, sir.

Q. Where did you keep them? A. There is an envelope furnished to us each day with our cash bag, that envelope is usually kept in a steel box back of the cash register.

Q. Did Mr. Gutmann ever criticize you or complain to you that you were overestimating your needs?

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A. No, sir.

Q. Did he ever complain to you that you had purchased too many brooders? A. No, sir.

Q. Or ordered too many? A. No, sir.

Q. Too may tractor attachments? A. I never had enough attachments.

Q. Wagons? A. Wagons.

Q. He never brought— A. He never brought the matter up to me. There was an overstock of one or two wagons, but they were—understand, there was three differ-

ent sizes of wagons to be handled and they might have been one wagon that would be overstocked out of three sizes.

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Intermediate Report and Recommended Order.

STATEMENT OF THE CASE

After the filing of a charge, an additional charge and a first amended charge by Retail Clerks International Association, Local Union No. 1687, AFL, the General Counsel of the National Labor Relations Board, through the Regional Director of the Board for the Third Region, on November 26, 1954, issued a complaint against Montgomery Ward & Co., Incorporated, as Respondent, alleging that the Respondent had violated and is violating the provisions of Section 8 (a) (1) and 8 (a) (3) of the National Labor Relations Act, as amended, (61 Stat. 136; 29 U. S. C., Supp. I, Section 141 *et seq*). The alleged violations are discussed below.[1]

Upon request of the Respondent, the General Counsel filed a statement of particulars; the Respondent thereafter filed timely answer to the complaint. Upon due notice, the matter came on for hearing before the undersigned Trial Examiner on January 11, 1955. On that day certain amendments to the complaint, to the statement of particulars, and to the answer were made and allowed without objection from any party. On the issues framed by the complaint

[1] Retail Clerks International Association, Local Union No. 1687, AFL, is sometimes referred to herein as the Union; the General Counsel of the National Labor Relations Board or his counsel as the General Counsel, as apparent in context; the Regional Director for the Third Region as the Regional Director; and Montgomery Ward & Co., Incorporated, as the Respondent or the Company. The National Labor Relations Act, as amended, will be referred to as the Act.

as amended and the answer as amended, the hearing went forward, and was closed on January 14, 1955.

At the hearing the General Counsel, the Respondent, and the Union as charging party, were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence

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bearing upon the issues, to make oral argument, and to file briefs, proposed findings of fact and conclusions of law, was afforded all parties.[2]

Upon the entire record in the case, and from his observation of the witnesses, and after careful consideration, he Trial Examiner makes the following:

FINDINGS OF FACT

I. The Business of Respondent

The Respondent, Montgomery Ward & Co., Incorporated, is and has been at all times material hereto, a corporation duly organized and existing by virtue of the laws of the State of Illinois, maintaining its principal office and place of business at Chicago, Illinois, and has maintained and operated retail and mail order stores in the State of New

[2] Before any witness was called, counsel for the Respondent objected to the hearing going forward and moved for a stay of proceeding, "on the ground that in the absence of a General Counsel of the Board there is no authority to proceed inasmuch as under Section 3 (d) of the National Labor Relations Act, final discretion as to the investigation of charges, issuance of complaints and prosecution of complaints is vested in the General Counsel, and that the office is now vacant." The Trial Examiner could perceive no prejudice which could attach to the Respondent should the hearing proceed, and accordingly denied the motion for a stay. The charge herein was filed September 10, 1954, the additional charge on October 4, 1954, and the first amended charge was filed on November 26, 1954. The complaint was issued on November 29, 1954. The term of Mr. George Bott as General Counsel expired at the close of business on December 20, 1954; he previously had designated his counsel for the purposes of this case. In this connection, see *Bonwit Teller, Inc.*, 96 NLRB 608, 197 F. 2d 640, cert. den. 345 U. S. 905.

York (including its retail and mail order store located in Binghamton, New York), and in various other States in the United States, where it is now and continuously has been engaged in the sale and distribution of merchandise. In the course and conduct of its business operations during the year 1953, the Respondent sold, through all of its various retail and mail order stores located in the State of New York and other States in the United States, merchandise valued in excess of $100,000,000, and sold through its retail and mail order store located in Binghamton, New York, merchandise valued in excess of $1,000,000 of which approximately $32,000 was sold and shipped to customers located outside of the State of New York. During the same period, the Respondent purchased for its retail and mail order store located in Binghamton, New York, merchandise valued in excess of $1,000,000 of which approximately 35 percent was purchased outside of the State of New York and shipped directly to its said retail and mail order store located in Binghamton,

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New York. The business operations of the Respondent were not substantially reduced, if at all, in the time between the filing of the complaint and the hearing herein.

The Respondent is engaged in commerce within the meaning of the Act.

II. The Labor Organization Involved

Retail Clerks International Association, Local Union No. 1687, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act, admitting to membership employees of the Respondent.

III. The Unfair Labor Practices

Preliminary Findings

The issues drawn herein, by the pleadings, by motion and by proffered and accepted testimony, require that it be decided whether (1) the Respondent by certain of its responsible representatives or agents, interrogated, warned, threatened or otherwise interfered with the rights of its employees in connection with union organization and activity; (2) whether Irene Gladys Witter and Frank J. Felker, or either of them, were discharged from the employ of the Respondent at its Binghamton, New York store, on or about August 19, 1954, and August 23, 1954, respectively, because each of them joined or was active in behalf of or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and for any such reason has been denied reinstatement to her or his former or substantially equivalent position or employment; (3) whether the Respondent decreased the rates of pay of Witter and Felker because of the union activity of each of them; and (4) whether that by engaging in such practices the Respondent discriminated and is discriminating in regard to hire and tenure as conditions of employment of these and the other of its employees at its Binghamton store in contravention of the rights guaranteed to all of its employees under Section 7 of the Act. The Respondent has entered a general denial to each of these alleged violations of the Act and also sets up certain affirmative defenses, in which it says, in substance, that an election among its employees at its Binghamton store, upon the petition of the Union to be certified as the collective representative of these employees,

within an agreed-upon bargaining unit, and the result of that election, and the subsequent certification of the Union as bargaining representative, (1) now estops the Union from claiming that certain employees within the bargaining unit are

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supervisors within the meaning of the Act; (2) that the status of the alleged supervisors as employees under the Act has been adjudicated by the Board; and (3) that at least until the time of the filing of the complaint herein, the Respondent relied upon the "certification of the bargaining unit" which included persons now claimed to be supervisors, as showing those persons to be "employees" within the meaning of the Act, and therefore the Respondent was compelled to refrain from interfering with the right of these persons or any employees to the exercise of free speech in regard to union matters and activities so as to avoid unfair labor practices.

Prior to the filing of complaint herein, the Union on July 16, 1954 filed a petition for certification as representative with the Regional Director, and on August 9, 1954, the Regional Director approved a stipulation for certification upon consent election entered into between the Union and the Company. The stipulation described the appropriate bargaining unit as:

> All employees of Montgomery Ward, Binghamton, New York retail store, excluding the Manager, Assistant Manager, Guards, Professional Employees, and Supervisors as defined in the Act.

On August 17, 1954, an election was conducted and as a result the Union was certified as the collective bargaining representative for the employees in the unit defined in the

stipulation for certification upon consent election. *Montgomery Ward & Co., Incorporated and Retail Clerks International Association, AFL, Local 1687* Case No. 3-RC-1439.

At the time of the election, there were approximately 81 employees found eligible to vote, including employees called department heads. At the hearing herein, it was stipulated between counsel for the parties that the store manager and the assistant store manager are supervisors within the meaning of the Act.

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Management of the Binghamton Store

The Binghamton store is divided into departments, each department having one or more divisions, with the employees in each department subjected to the immediate supervision of a department head. Each division is given a designated number; for example, the appliance department is made up of division 62 (radios), division 63 (television), 68 (stoves), 69 (refrigerators), and 85 (washing machines). At the time of the election on August 17, 1954, there were 28 departments in the store, each having a department head.

The Binghamton store, within the organizational structure of the Company, is one of some 18 stores, more or less, in District 2 of Region 1. Region 1, with headquarters in New York City, has territorial jurisdiction over what roughly may be called the eastern part of the United States, divided into 6 districts. This region has a regional manager, who heads a staff consisting of himself, a personnel manager, a merchandise manager, an operating manager and, at the field level, 6 district managers

and a store manager for each store under the district manager for the particular district in which the store is located.

The operating manager, working with the district manager, is chiefly responsible for the control of profit on a regional basis. The district manager, on the basis of a basic organization structure for each store in his district, established by the regional office (regional operating manager under the general supervision of the regional manager after conference with the district manager) is responsible for each such store, and for obtaining maximum sales and profit in his district. Through a system of detailed reports furnished by the store manager, a close check is maintained on the operations of each store, and a review of these reports

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against the basic organization chart for that store provides the district manager and his superiors with information as to whether the store is meeting the sales quotas, overall and for each of its several departments, and whether the store is within its budget for payroll and other expenses. The store manager has only a slight degree of leeway in what is permitted by the basic organization structure; he has an allowance of a certain percentage of the sales over those shown as "basic" which he may use to pay extra or temporary help as long as "basic" is met and such an "allowance" is earned.[3] The basic store chart sets up the number of regular, reserve or extra employees the store manager may employ (other than an

[3] To find the "allowance" which may be used each week by the store manager, a former operations manager testified, the net sales of the store for the week "over the basic" produces a figure: "* * * the figure is an applied formula percentage that is applied to the excess sales over the basic sales in the non-commission department."

"allowance"); otherwise, in the case of hiring new employees or in the granting of increases, the store manager recommends to the district manager. In short, the basic organization schedule, established in the regional office, sets up the organization of the store, and guides the store manager in the performance of his duties.

The testimony herein shows that in district 2, where the Binghamton store is located, the "basic" is revised twice a year; that operations for the preceding six months are reviewed by the regional office in June and November, that a new "basic" was issued on about December 26, 1953, to become effective in January 1954, and that a new or revised "basic" was issued sometime after June to become effective during July 1954. During the course of such a review, and before the issuance of a revised "basic", the regional office staff members, having examined the performance of the store and its departments, and having before them the results of the comparisons of sales, payroll, profits and other material items, consider the physical aspects of the store, sales trends and prospective

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profits or loss, make final decision, and issue a new "basic", to be put into effect by the store manager.[1] Thereafter, and until the next "basic" is established, changes in current basic can be established only upon a "basic change notice" submitted by the store manager to the district manager for approval. If the basic change notice is approved by the district manager, he in turn submits it with his recommendation to the regional office.

[1] On the "basic", each employee, by person and by salary, is given a certain basic sales figure. The basic sales figure also depends upon the number of persons in the department. The basic sales figure so established is the figure which management believes should be met in order for a particular group to pay for themselves in terms of cost and profit.

The Respondent, in regard to the discharges of Witter and Felker, in effect, sets up the revision of the basic organization structure in July, 1954, as the primary cause for the discharges.

Department heads as "supervisors"

C. A. Rumble has been manager of the Binghamton store since March 15, 1953; John Carl Brancato has been assistant store manager since September 8, 1953.

The allegations of the complaint concerning the charge that the Respondent interfered with, restrained and coerced employees in violation of Section 8 (a) (1) of the Act are based upon certain alleged activities of Rumble, the store manager, Brancato, the assistant store manager, and Leonard DuFour, head of the appliance department. Rumble and Brancato concededly are supervisors within the meaning of the Act; neither one of them voted in the election on August 17, 1954. The General Counsel contends that DuFour is a supervisor within the meaning of the Act, notwithstanding the fact that he, as well as other department heads, voted in the election. The Respondent takes the position that because DuFour voted in the election, the General Counsel is now estopped from contending that he is a supervisor; and that the Board has adjudicated the question in Case No. 3-RC-1439.

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In Case No. 3-RC-1439, the petition for certification requested that department heads be included in the bargaining unit; the stipulation for consent election subsequently entered into between the Union and the Company provided that supervisors be excluded from the unit. Ap-

parently no question was raised concerning the status of any department head as a supervisory employee before or at the time of the election on August 17. No evidence of the eligibility of DuFour or any other department head to vote can be found, nor is there evidence that their votes were challenged. It was only after the election, and after the termination of employment of Witter and Felker, and upon the filing of a charge of unfair labor practices against the Respondent, that the question was raised as to whether DuFour, in particular, was during these times an "employee" or a "supervisor." The Respondent, in support of its position that the General Counsel and the Union are now estopped from charging that DuFour is and was a supervisor so as to make his employer responsible for his acts and words against the unionization of the employees, has cited *N. L. R. B. v. Carlton Wood Products*, 201 F. 2d 863, 866 (C. A. 9, 1953) and *N. L. R. B. v. Scullin Steel Co.*, 161 F. 2d 143, 149 (C. A. 8, 1947). The *Carlton* case involved primarily a refusal to bargain in good faith in contravention of Section 8 (a) (5) of the Act. The *Scullin Steel* case came before the Board after the Board on hearing had decided that four minor supervisory employees were "employees."[5] The Respondent, relying upon *N. L. R. B. v. Russell Mfg. Co.*, 187 F. 2d 296, mod. 191 F. 2d 358 (C. A. 5, 1951) and

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Goodyear Clearwater Mill, 102 NLRB 1329 (1953), asserts that by definition an "employee" is a non-supervisor, and in order for an employer to be guilty of an unfair labor practice growing out of the actions of the non-supervisor

[5] At the time the Court of Appeals handed down its decision in *Scullin Steel*, on April 27, 1947, the term "supervisor" had not been defined by statute as it now is in Section 2 (11) of the Act.

it must be shown that he was acting as an agent of the employer. But this is not precisely so. (Cf. *International Association of Machinists v. N. L. R. B.* 311 U. S. 72, 80). These cases are not in support of the point made by the Respondent. The Trial Examiner is of the opinion that for the purposes of the instant case, it becomes necessary to decide the supervisory or the non-supervisory status of DuFour.

The Respondent in its brief says that it "* * * is confident that the Board would not permit a union to be successful one month in having a person included in a bargaining unit, and then be successful the following month in a charge that the employer was guilty of an unfair labor practice stemming from conversations of that same person. This is especially true when the conversations took place during the month when a union exerted its successful effort to be named to represent that person." It seems to the Trial Examiner that there is little merit wrapped up in this short argument. The plain provisions of the Act, under which the Board enforces the public interest, require that the rights of employees as set forth in Section 7 be protected. Therefore, the question of DuFour's status should be decided.

As noted above, the bargaining unit certified by the Board after the election of August 17, 1954, was a unit agreed upon by stipulation between the parties, that is, the Union and the Respondent: the Board has never actually adjudicated the question as to whether department heads, including DuFour, were or are supervisors within the meaning of the Act. The Board is not estopped to decide that question in the instant proceeding. *Valentine Sugars, Inc.*, 102 NLRB 313, 314, Fn. 3; *Crescent Ink and*

Color Company of Pennsylvania, 110 NLRB No. 663, 665, Fn. 11; *Brewster Pateros*

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Processors, Inc., 73 NLRB 833; *The Murray Company*, 77 NLRB 481.

The Trial Examiner, on the preponderance of the evidence, finds that DuFour, during the times mentioned, was a supervisor within the meaning of the Act.

DuFour assumed his duties as head of the appliance department, consisting of divisions 62, 63, 68, 69 and 85, on March 17, 1954, and occupied that position continuously up until and including the dates of the hearing in this case. During all these times DuFour had the authority to direct employees in their work in his department and to direct the activities of outside salesmen working out of that department, to effectively recommend the hiring and firing of employees and otherwise to supervise the running of his department. Upon request he at times assisted Rumble in checking proposed advertising in the departments of the store. The General Counsel offered testimony, uncontradicted on the record, that certain individuals had applied to DuFour for positions, had been interviewed by him concerning their experience, and that he had in at least one instance reprimanded an employee for not doing enough work as an outside salesman and subsequently discharged him. James Bright talked to DuFour about a job and the latter then advised Brancato that Bright was coming to work that evening or the following morning; Albert Lindsey presented his application for employment to DuFour and later was instructed by DuFour to report for work; William Knowlton was interviewed by DuFour and later was instructed by DuFour to come to work; and

DuFour on various occasions reprimanded Lindsey, Knowlton and Bright in connection with their work in his department. There is a contradiction here, more apparent than real, when it is remembered that the store manager, usually before hiring a person, must submit a basic change notice to the district manager before hiring a permanent employee. The Trial Examiner has concluded, however, after a study of the basic organization structure charts submitted in evidence, and hearing DuFour, Lindsey, Knowlton, Bright and Rumble testify, that without regard to the fact that Rumble had to have

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final authority from the district manager to hire a permanent employee, that either he had this authority which he delegated to DuFour and exercised it or assumed the authority which would permit DuFour to hire these employees. The record clearly shows that these employees in the appliance departments as well as others in the store, regarded DuFour as a supervisor.

The Respondent, on the assumption that DuFour during these times was an employee, as distinguished from a supervisor, says that under the Act, it could not as an employer interfere with the freedom of speech of persons in the bargaining unit on the subject of union organization, citing the dicta set forth in *Elastic Stop Nut Corporation v. N. L. R. B.*, 142 F. 2d 371 at 376 (C. A. 5, 1944) and *Humble Oil & Refining Co. v. N. L. R. B.*, 113 F. 2d 85 at 92 (C. A. 5, 1940). It refers, too, to *N. L. R. B. v. Jas. H. Matthews & Co.*, 156 F. 2d 706, 709 (C. A. 3, 1946). However, it is decided now that DuFour as a supervisor stood in the place of management when he made the statements attributed to him.[6] The time when the Company should

[6] See pp. 9, 10 below

have raised the question as to whether he or any other department head was a supervisor was when it and the Union were engaged in agreeing upon those employees at the Binghamton store who properly could be found to make up an appropriate bargaining unit. That the Union then claimed, and the Company then agreed or conceded that a supervisor be included within the unit, cannot release the Company from responsibility for later acts done or words spoken by a supervisor in opposition to union organization. That the claim of the Union was ill-advised or not well-founded cannot excuse the failure of the employer to contest the lack of right or privilege of one of its supervisors to participate, pro or con, in union organizational activities.[7]

Union organization

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Early in June, 1954, representatives of the Union were engaged in a campaign to organize employees who worked at the Binghamton store. On June 2, several employees, including Irene Gladys Witter, met with representatives of the Union at the home of Agnes Hurst, a company employee, for the purpose of organizing a local union. Witter received an application for membership, which she signed and returned to Hurst on the next day. During the following days, Witter solicited a number of employees for union membership, and distributed application cards

[7] The question of whether or not other department heads who voted in the election were supervisors has not been considered by the Trial Examiner. DuFour is the only one of them charged with unlawful activities. Generally speaking, from the evidence received at the hearing, it appears that most department heads are primarily salespeople, charged with maintaining and if possible exceeding their sales quotas, keeping their respective departments in good order and seeing that they have sufficient merchandise in stock or conversely that they are not overstocked with certain items of merchandise.

among them. Frank Felker received a card from Witter, which he signed and returned to Hurst on June 3. Meetings of the Union were held in June, July and August, some of which were attended by Witter and Felker. The Union had filed its Petition for Certification on February 16, 1954; the Company agreed to a consent election on August 5, 1954, and on August 25, 1954, after the election held on August 17, the Union was certified as bargaining representative.

On May 6, 1954, the New York Regional Office of the Company transmitted to its store managers, including Rumble, a document called Labor Policy, dated March 15, 1954, issued by the Company's Manager of Labor Relations, setting forth in considerable detail the labor policy to be followed by each store manager and instructing him quite carefully concerning the respective rights of management and employees under existing

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law. Rumble testified that he endeavored to adhere to this labor policy; the Respondent vigorously contends that it was adhered to, and that no responsible member of management engaged in anti-union activity.

Interrogation by representatives of the Respondent

The General Counsel introduced evidence intended to prove that Rumble, Brancato and DuFour at various times interrogated employees concerning their union membership or activities in violation of Section 8 (a) (1) of the Act.

Bruce Shoudy, head of the sporting goods department, testified that approximately a week before the election,

Rumble approached him and William Dino, another employee in the sporting goods department, and engaged them in conversation:

Q. (By Mr. Cavers) What did he say to you and what did you say to him?

A. As I remember it, Mr. Dino and I were in the department and Mr. Rumble walked up to us in a casual manner said to us, "What do you hear about the Union?" And I turned to him and I said, "not much," and he said, "well, have you been to any meetings" I said, "Oh, one or two. Why?" And he just asked me, he says, "Oh, I was just curious as to what went on." I said, "we just talked about the good and bad working conditions of the store and what the Union can do to help them." Then he says, "Well, do you think they

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can do enough for you to join?" I says, "I haven't decided." And that ended it.

Dorothy Marold, employed as head of the hosiery department, testified that sometime prior to the date of the election she called at the office of Rumble to see about additional help for her department; that when she walked in his office Rumble said "something like this: 'did you join the Union,' or 'what do you know about the Union,' or something to that effect;" that she did not answer him and that he then asked "do you mean to say that they haven't asked you?" To which she replied, "No, they didn't." On cross examination, Marold testified that Rumble started out by saying, "Did you join the Union," and that he "said it rather jokingly, like he might have been talking about it to someone else, at least that is the way I

took it." She said that she and Rumble were the only ones present at the time. Rumble, when he testified, could not remember this conversation.

Irene Gladys Witter testified that 2 or 3 days before the election she engaged in the following conversation with Brancato:

> Well, I was on the main floor by Mrs. Hurst's department at the time that it happened and he came down through the department and talked about merchandise which he was looking over. he was looking over some new merchandise that she had got then, and he said, "well, you know, Gladys we are not going to let you vote in the election." Of course, I said "well, why is that?" Well, there had been a joke around the store, I had worked in so many different departments, in the basement, that they called me supervisor just as a joke, so he said, "well, you are a supervisor of toys and a supervisor isn't allowed to vote." So, of course, I said, to him "I intend to vote, and you know I intend to vote, yes."

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This conversation between Witter and Brancato is not denied by the Respondent.

The substance of Rumble's testimony was to the effect that he had not *questioned* any of his employees as to whether or not they had joined the Union, and that he could not recall talking to any employees about the Union with the exception of a talk with an employee named Shirley Moore after Brancato had told him that pressure had been applied to her by other employees who reportedly told her that she would be fired if she did not join the Union.

As the Respondent says in its brief, there is no doubt that DuFour discussed the merits of unionization with other employees in the Binghamton store. The Respondent says: "There is not always agreement as to what was said, but the testimony is so uniform on the point that it may be concluded that DuFour's philosophy embraced opposition to unionization in general, and organization of the Binghamton store in particular." DuFour, as a witness, made no secret of his opposition to the Union. Under questioning by counsel for the Respondent he made this clear:

> Q. Now, you don't mind my asking, Mr. DuFour, you do have definite opinions about union matters, don't you?
>
> A. Very definite.
>
> Q. All right. I won't ask you what they are, but you haven't hesitated to express them, have you?
>
> A. No, sir. As a free individual and a citizen of the United States and as an employee not connected with management of Montgomery Ward, I was as much entitled to voice my
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>
> opinion against as they were for.

Bright, employed in DuFour's department prior to and at the time of the August 17, 1954, election, related that DuFour had approached him and asked if he (Bright) had been approached by any of the union members, that Bright replied that he had not, that DuFour then told him not to let the Union influence his thinking; that the Union did not have a chance of winning the election, and also told him that if the Union did win certain individuals in the store would be automatically squeezed out or that the Respondent would close the store. DuFour questioned Frank

Felker as to what he thought of the Union, and he told DuFour he thought it was a good thing because of the protection it would afford the people in the store; and thereafter on about August 6, DuFour told Felker "that the Company knows all of those that are in favor of the Union and they will lose their jobs"; and further, on about August 13 or 14, DuFour told Felker that should the Union be successful they would all lose their jobs because the Company would close the store.

Irene Gladys Witter testified in effect that between August 2 and 10, 1954, DuFour asked her if she had signed a union card and that when she replied that she had, DuFour told her she would lose her job because of the union activity.

The Respondent contends that DuFour never discussed the Union with Rumble and that on one occasion when he attempted to do so, Rumble requested that he not discuss anything about the union activities in Rumble's office or within his hearing. DuFour said he had been told either by Rumble or Brancato that they were not allowed to discuss union activities and they would appreciate it if he did not mention such matters to them. DuFour said that at no time did he overhear Rumble discussing the Union with other employees. On behalf of the Respondent it is asserted that Brancato engaged in no interrogation at all, but merely made a joke at one time about the supervisory status of Mrs. Witter; and that Rumble

on one occasion had a casual conversation with Shoudy about the Union and on another occasion he referred jokingly to Mrs. Marold's union status and consequently that these isolated and therefore harmless incidents can

not be defined as such interference, restraint, or coercion as is prohibited by Section 8 (a) (1).

The discharge of Felker

Frank Felker was first employed by the Respondent at its Binghamton store in June, 1942, in the farm equipment department, described as division 87, at a base pay of $35 per week plus a commission of 4 percent on weekly sales in excess of $600. He continued in that job until January, 1953, when he quit after a disagreement with one Orman, who at that time was store manager. He then was receiving $60 per week, plus commission. In March, 1953, after Orman had been succeeded by one Schofe as store manager, Felker was solicited first by one assistant store manager and then by another to return to his previous job. A few days after the second request, Felker called at the store and discussed the possibility of his returning to work with Schofe. Felker was then employed by Sears Roebuck and Company in a store in a neighboring community, at a salary of $65 per week plus commission. Schofe asked Felker what he would accept in the way of salary to return to his old job; Felker replied that he would leave that up to Schofe; the latter offered $70 per week plus a 4 percent commission on weekly sales over $600; Felker accepted the offer, and a few days later returned to his former job in division 87. About one month after that, Rumble succeeded Schofe as store manager.

On June 3, 1954, Irene Gladys Witter, who had attended a union organization meeting the night before, gave Felker a form of application

card for membership in the Union which Felker signed on the following day and gave to Agnes Hurst, at whose

none the meeting had been held. Felker attended union meetings, one about the middle of July and two others on August 2 and 10; during the latter part of July and the first part of August, during the height of union organizing campaign, he solicited at least four employees to join the Union and advanced money to one of them so that he could join the Union. It was during these times, that is, between the last week in June and on August 13 and 14, that the conversations between DuFour and Felker took place, in which DuFour had asked Felker what he thought about the Union, had told Felker that the Respondent knew all those who were in favor of the Union and that they would lose their jobs and had also told Felker that "if the Union comes in we'll all lose our jobs because Montgomery Ward will close the store."

About July 1, Rumble informed Felker that due to low sales in the farm equipment department it would be necessary for Felker to take over the toy department, called division 48. Rumble then gave Felker the inventory book for the toy department, told him that the B and X inventory time was approaching and that it would be necessary for Felker to take it.[3] On the following four days, Felker was engaged in taking inventory of toy stock in the warehouse, located away from the store; and after completing that inventory, Felker worked in both the farm equipment department, division 87 and the toy deparment, division 48. Felker at various times also assisted in selling paint, the paint department being headed by Joseph M. McGraw.

[3] B inventory is described as merchandise more than 6 months old and X merchandise is merchandise more than 1 yeaf old. The B and X inventory appears to give the store manager and his assistants considerable concern, it being the stated policy of the Company to liquidate that inventory as quickly as possible.

On Monday, August 16, Felker began a week's vacation. On the following day he voted in the union election, which was held on the store premises. On the following Monday, August 23, he returned from his vacation and reported for work as usual but found that his timecard was not in the card rack. According to Felker he went to the office and saw Brancato, the assistant store manager and informed him that something was wrong because his timecard was not in the rack; that Brancato said that nothing was wrong, that he had the timecard there; and that at the time he had Felker's timecard, a receipt book and an envelope containing Felker's pay in his hand. After Brancato had given Felker the envelope containing his pay, Felker inquired as to "what was wrong" and Brancato told Felker that he would have to release him and that the reason for Felker's release was "by orders of the New York Office." Brancato then offered Felker a part time job at $20 a week which Felker refused. Felker then asked Brancato for his week's dismissal pay; Brancato said he had no authority to pay it. About 10 days later Felker requested his dismissal pay from Rumble, and Rumble said he could not give it to him and also said "Frank, I hope you don't hold anything against me. As far as I am concerned, there was nothing wrong with your work."

During the approximately 12 years that Felker was employed at the Binghamton store, he had an excellent sales record. In 1943, and again in 1945, Felker was awarded membership in a Company-wide sales leadership club; during 3 months in 1954 he was high in catalog sales in the Binghamton store; in 1953, he was high in the sales of tractor equipment in the Binghamton district and was awarded a $10 prize. As noted above, he was requested to return to

work in 1953, after he had quit in January of that year, and upon his acceptance of that offer he returned to work at an increase over his former salary. Rumble testified that Felker had a good sales record; several witnesses testified that Felker was an

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excellent if not the best salesman in the Binghamton store including McGraw, who succeeded him as head of the farm machinery and toy divisions.

The Respondent seems to draw a distinction between Felker as a salesman and Felker as a "merchandiser." Rumble testified that the reasons for Felker's discharge were these: that he was guilty of poor maintenance of his department (did not dust properly, did not keep his displays filled, and the floor was not kept clean), poor merchandising (that there was an imbalance of stock requisitioned and sold by Felker), that he was a member of a riding pool and therefore was not available for overtime work, and finally for these reasons, Felker was selected for termination rather than McGraw when top management decided to combine Felker's farm machinery and toy divisions with McGraw's paint division.

With respect to the claim that Felker was a poor housekeeper, the Respondent made out a poor case. Rumble and Brancato very seldom appeared in the basement where Felker's department was located. McGraw, whose paint department was located in the basement near Felker's farm machinery department, testified that all of the departments in the basement were hard to keep clean, including his own, and that he did not think that Felker's department was less clean than any of the others in the basement. It appears that Felker, as a salesman, or as a "merchandiser,"

or a combination of both, was required not only to keep his counters free from dust and dirt, but also to use touch up paint and polish on the equipment on display in his department. One of the reasons given for the discharge of Felker—that is, this poor maintenance, would apply equally to McGraw, who was chosen as Felker's successor. Nor does the Trial Examiner place much credence in the story that Felker refused to work overtime because he was a member of a car pool or a group of persons who ordinarily rode together in an automobile to and from work at stated hours in any day. Felker drove his own automobile and he very frankly said that he gave rides to many people back and forth from where he lived in Montrose, Pennsylvania, and the Binghamton store. It appears he did work overtime when it was necessary.

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Christian Donald Gutemann, presently assistant personnel manager in the New York Regional Office, was assistant manager at the Binghamton store from April 1952 until during the month of April 1954. Gutemann, testified on behalf of the Respondent. He said that Felker overestimated his needs almost every week, that his thinking was "illogical" and, in substance, that he was a poor merchandiser. Gutemann said that several times, four or five at least, he had asked Felker to work overtime but that Felker had said that he could not do so because he had riders in a riding pool.[9]

Ormain, store manager at the time Felker quit his employment in January 1953, and Felker prior to the time

[9] Gutemann also testified that in the course of his duties he had prepared a personnel report, called Retail Store Employee Appraisal, rating Felker in December 1953. The rating itself shows that Gutemann and Rumble considered Felker a satisfactory employee at that time. The testimony of Gutemann regarding Felker's faults and his formal appraisal of him are quite apart

Felker left had had their differences. Felker said, in response to questions on cross-examination, that Orman had told him (Felker) he did not have the authority to write orders and had given him a tongue lashing in this respect; that Orman had told him that he was setting wrong prices on certain sickle bars, with which Felker disagreed; that Orman threatened to fire him because the painters had removed two cans of paint from the paint department while Felker was in charge during the absence of McGraw; and that Orman criticized Felker for failure to liquidate the B and X inventory as fast as Orman thought it should be liquidated. Felker seemed to regard these incidents as more or less minor, as apparently Orman did, except that Felker resented the "tongue lashing" and the third and last discussion between them concerning the paint which the painters had removed, at which time Felker says Orman picked up a hammer, swung it in front of his face, and threatened to fire him.

The Respondent places a great deal of emphasis on a criticism directed to Felker concerning his failure to liquidate B and X inventory stock. Criticisms made by Rumble and Brancato are said to be supported

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also by written directions written on Felker's B and X inventory of division 87 merchandise as of July 30, 1953 and also from entries on the inventory from August through December 1953, showing the extent to which the inventory had been liquidated at or during these times.[10] For instance, Felker was directed in the fall of 1953 to "make price on chain saws." On a division 6 inventory made as

[10] It was customary in the disposal of old B and X merchandise to mark it down at lower prices and such markdowns would be reflected on the inventories

of July 31, 1954, and carried forward to July 1954, Rumble had entered certain directions to Felker to the effect to sell B and X items first, to get certain items on the floor for display, to dispose of certain lawnmowers and attachments, etc. Likewise, Brancato made certain longhand notes on the B and X inventory, directed to Felker, instructing him in certain respects to push B and X merchandise, or to be sure it was sold first and cautioning him to get rid of old merchandise including a repossessed tractor and other farm equipment, electric fencers used to keep cattle from going astray, to "move" certain small chain saws, and other instructions regarding the handling of merchandise in Felker's farm machinery division. The Trial Examiner is of the opinion, on the basis of the preponderance of the testimony herein, that Felker handled the B and X inventory as well as it reasonably might have been expected to be handled. The New York Regional Office estimated sales and merchandise which would be needed for each store and each department. Felker testified that his orders for merchandise were subject to cancellation by Rumble—that all Felker did was check off orders for items which he thought were

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needed and submit the order slip to the order department. He also testified that during 1954 he was not permitted to carry as much stock as previously because he was not given a large enough "open to buy" (meaning a sufficient amount of money to be spent for merchandise to supply his department) as he had been in previous years. The district manager conceded that the Binghamton store was carrying less merchandise during 1954. Felker says further, without contradiction, that during this time he had quite a lot of old merchandise on hand because the stockroom

would send in the latest rather than the oldest merchandise from the stockroom bins, which would result in an accumulation of old stock in the warehouse which would show up eventually on the B and X inventory. From all the testimony, and from his examination of the voluminous exhibits herein the Trial Examiner is convinced that Felker was not fired because he was a poor housekeeper, or was a poor merchandiser, or because he was a member of a car pool.

The Respondent does not precisely contend that Felker was discharged for any one or all of these three reasons but does imply that they were taken into consideration in its determination as to whether or not Felker or McGraw would be the one to leave upon the application of the requirements of the basic organization structure promulgated by the regional office at the end of July 1954. It is uncontradicted, too, that Felker did reduce his old inventory to the extent of 50 percent on X inventory items and 75 percent on B inventory items. The Respondent contends that although improvement was shown by Felker in the reduction of X and B inventory in 1954, nevertheless the improvement did not meet Company standards which Gutemann said required 100 percent liquidation. In this connection it should be noted that an excessive amount of items in X and B inventories would reduce the merchandise which Felker would be permitted to buy according to his permissible "open to buy." Actually, therefore, it appears that the amount of goods carried by Felker in his department was dependent upon the approval

of his order requests by the store manager and that, if an excessive amount of items in B and X inventory were on hand, that would tend to reduce the amount of merchandise which he was permitted to carry in his department.

Some of his orders for merchandise had been turned down during April, May, June and July, 1954, principally, it is inferred, because of the amounts of items in his B and X inventory. If, as he claims, that he could not get rid of his B and X inventory because he had insufficient display space, because he received old merchandise and because the stockroom did not keep his department merchandise in proper order to supply and, more important, because the amount of merchandise allotted to him was decreased by the regional office, it would appear that Felker accomplished quite a lot in disposing of the percentages of B and X inventory that he did.

The assertion that Felker was unwilling or refused to work overtime because he had riders dependent upon him for transportation between Montrose, Pennsylvania, and Binghamton seems to be founded more upon assumption than upon fact. Felker never refused directly to work overtime and it appears that some sort of a flexible arrangement was worked out as to his hours in the store which would permit him to come in earlier some mornings rather than to stay later in the evening; this with the full approval of Brancato. There is no evidence that Felker ever refused to work overtime, or that his so-called unwillingness to work overtime resulted in any inconvenience or loss to the store. The only occasion when Felker might have been criticized in connection with overtime work was late in June, 1954, when he was requested to return to the store at 7 o'clock in the evening and work until 9 o'clock, and he pointed out that was a lot to ask because he was too far away to go home for his evening meal. In this connection he said that Brancato was the one who had asked him to leave at 5 o'clock when the store closed and to come back at 7 and work until 9. In this conversation Felker remind-

ed Brancato that according "to our basic book of employment, if I can't get back in time the Company is supposed to buy the dinner ticket." After that Felker testified that at a meeting when men were kept over a vote was

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taken "as to how we would put in our extra hours above the 40 hour week that the store is open. We were required to work 4 extra hours, 44 hours for our basic pay. If was voted that we continue to work straight through until 6 o'clock and go home instead of working until 5, closing the store and coming back and working 7 to 9."

The least improbable reason advanced by the Respondent as a cause for Felker's discharge is the contention that because store sales had dropped off in the preceding year and 6 months including sales in Felker's department, it was a matter of management judgment and good business to curtail expenses and in so doing to combine Felker's department (farm machinery) and the toy department with the paint department, headed by McGraw. In this connection, the Respondent introduced records showing month by month the sales of each division in the Binghamton store from January 1953 to November 1954 inclusive and also a tabulation of the sales in division 87 (the farm machinery division) for the same period. This tabulation shows that the farm equipment division sales, as compared to corresponding months of the previous year, increased 15.9 percent during the spring of 1953, but decreased 19.2 percent during the fall of 1953 and 33.9 percent during the spring of 1954. However, it does appear that during the fall of 1953 or thereafter the store discontinued the sales of certain items in division 87 such as feeders and certain types of winter equipment. The Trial Examiner has examined the

records introduced by the Respondent but from them alone can make no determination as to the figures which show increases or declines in sales in the various departments of the store, including division 87. Nor does the basic organization chart in effect until the end of July 1954, throw any light on the subject. The testimony of Robert Elliott, who was the operating manager chiefly responsible for the establishment of that chart, and the testimony of C. N. Levengood, district manager during that time throws considerable light on the subject when con-

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sidered together with the records presented.

In the process of revising the basic organization structure for each store, during the times mentioned herein, Levengood as district manager and Elliott acting as operating manager reviewed the existing basic structure in each store in the region and after conference and comparison of sales figures, costs, and so on, would issue a new revised basic as described above (pp. 4-5). Levengood as district manager is said to have been interested in maintaining as large a sales force in each store as possible commensurate with the making of profits according to the basic chart, which would justify the holding of personnel, while Elliott, on the other hand, was interested in reducing costs to the most efficient minimum. Accordingly, they seem to be agreed, Levengood was in the position of defending a holding or acquisition of salespeople and others in each store, while Elliott was interested in cutting down wherever possible without jeopardizing sales and profits.

Elliott undertook to explain and to justify the decision to combine division 87, and division 48, toys with division 75, paints, under one department head. His explanation was

to the effect that he and Levengood had decided during June that on the basis of expected sales for the coming half year, Felker's department would do roughly one-fifth of the business done in the corresponding months of the preceding year. Therefore, it seemed reasonable to him and Levengood that they would do away with Felker's job paying $70 plus commission and give his work to McGraw who was earning $60 per week plus commission and give McGraw a part time man with an allowance of $20 per week for him out of "basic," anything over that to be paid to him to be the responsibility of the store manager and to be paid out of the store "allowance" (Described p. 4 above).

The method of review described by Elliott appears to have been somewhat hit or miss as far as they were concerned, but the result seemed

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to be rigidly applied so far as the store manager was concerned. For instance, Elliott said that the estimates of future sales considered by him and Levengood in revising the "basic" in New York, originated in the inventory control office of the region, that that office furnished them with projected sales figures, and that in most cases he and Levengood accepted them: except, he said, "in some particular instance we knew of something specific that is going to happen in that store that inventory control did not know about *,* * and that was taken into account and the figures adjusted." Thus, even when Elliott and Levengood were discussing each particular store they had before them a report from inventory control which more or less bound them, and it would appear that they would have to justify any change made in estimated or projected sales as furnished by inventory control.

The system adopted by the Company for the furnishing of reports to the regional office furnishes the operating manager and inventory control in New York, as well as the merchandising experts for each department in the various stores in the region, with figures which permit the eventual sales figure for each department in each store to be shown for the preceding 6 months period, according to Elliott. At the hearing, Elliott was asked whether or not that the items set forth for sale within a particular department are not pretty much under the complete control of the New York office, and whether the inventory supplied to a particular department is according to the demand of the public, or according to the figures arrived at after the operating manager and the district manager have considered the figures furnished to them by inventory control. His answers in effect seemed to be this:

That taken all together, the operations manager and the district manager have the figures before them and consider them and then sit down

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and on the basis of sales trends and expected changes and any other matter they feel bears on the question come up with a new or revised figure for each department or let the old figure stand. In answer to a question as to what standards are used as a basis for these final projections, Elliott testified:

> I can only tell you what I know the inventory control section does because I didn't personally project these and would not in any case personally project them. But, the way you project any sale is to take the previous year's sales, knowing what you did the previous year, in this case when we are dealing with 6 months it would be the previous fall, then the trend which you

have run in the first 6 months of this year as far as you have the figures and in July, July 31 you would not have the July figures because we always—and then * * *

Trial Examiner: * * * well, I just don't know what standards you apply.

The Witness: There is no standard you can apply to projecting sales in retail business * * * Well, if there is anything further than the use of the previous year's sales and the basis of the trend at the present time then I certainly do not know what it is, and I once again repeat that I do not project the sales. The inventory control department does project the sales, and they are set up to do that type of work.

Trial Examiner: Is this a fair statement, and certainly I don't want to press you too hard on this point, but in effect you are saying that experts in inventory control by reason of experience and a study of trends and their expert knowledge of the retail business, and applying

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their specialized knowledge in their best judgment

The Witness: That is very, very, very true.

Trial Examiner: * * * take the prior figures and apply them on the basis of their experience and knowledge, apply them to this particular situation and come up with the projection.

The Witness: They apply it to every store in the entire region exactly the same way * * *

The explanation given by Elliott concerning the revision of the basic organization chart to be effective after July 31, 1954 can lead only to the conclusion that the basic organization chart itself portrays the hope of management

as to what sales will be and expenses of a store will be for the following 6-month period. In the preparation of that basic organization chart, there are many factors considered and actually it simply represents the best judgment of the operations manager and the district manager at the particular time they reach final agreement with the regional manager as to the content of the chart. The process of revision, itself is loose and furnishes adequate opportunity for the juggling of jobs within any particular store. Elliott has failed to convince the Trial Examiner that through only the application of scientific methods and according to the Company's best judgment, Felker became a casuality and that his union activity and membership had nothing to do with his discharge.

An examination of the records furnished, taken together with the testimony of Elliott, show that economies could have been effected in far greater measure than were effected simply by firing Felker and combining

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his two departments with another. Although the basic organization structure shows that a person was hired at $20 a week to assist McGraw after Felker's job was terminated, actually it appears that that man has been continuously employed since the week after Felker was discharged, and actually has earned $50 per week; that Felker was receiving $70 per week whereas McGraw who succeeded him was receiving only $60, and therefore there was a $10 savings effected. [11]Therefore, it seems plain that the store saved $10 per week by terminating Felker's employment. This may or may not be true.

Felker was an excellent salesman, yet at the time of his discharge he was offered a job at $20 per week, which would

[11] McHugh, the man hired to assist McGraw, was hired at $50 per week.

have wiped out the saving effected by his demotion. Further, it was not even considered that he was in charge of the toy department. The basic organization chart shows that the toy department, which was Felker's responsibility, was under Shoudy, head of the sporting goods department. Elliott said that the change must have been made at the store level, because the basic organization chart was what was supposed to show the actual assignment of toys.

Levengood, the district manager, testified that he discussed the elimination of either Felker's or McGraw's divisions as early as March 1954, whereas Ellioft testified that the recommendation to combine the two departments was made in late July 1954.

Levengood customarily travels from store to store in his district, and discusses from time to time changes in organization and personnel, with store managers. These various discussions are borne in mind by Levengood when he discusses the revision of "basic" with the operations manager. At or about the time of the revision of the Binghamton store "basic" in July, revisions in the basic organization structures of other stores in the region was made. Both Elliott and Levengood testified that some divisions were consolidated in a number of

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the stores in Levengood's district, although they did not always agree as to actually what was done in the other stores. Whether or not the combination of divisions in other stores in the Region is relevant here, which the Trial Examiner doubts, the fact is that the Binghamton store was the only one in this district where division 87 was combined with another division.

During the time one of Levengood's visits to the Binghamton store prior to March 1954, he discussed with Rumble the situation in the appliance department. They felt that the sales there were not what they should have been, and Levengood then told Rumble he would bear the situation in mind and see if he could find someone in his district to come in to the Binghamton store as appliance department head. Subsequently, DuFour reported for work on March 17. Levengood had sent DuFour on very short notice from Glen Falls to Binghamton. Rumble accepted DuFour as head of the appliance department without even knowing his name. Fortuitously or not, DuFour appeared shortly after the time the Union had filed its petition for certification in February. As related above, DuFour made no secret of his opposition to the Union and certainly, in his position, his remarks, his questioning and his comments to employees in the store about the Union were injudicious. His comments to Felker were particularly pointed.

The discharge of Felker because of change in "basic" appeals to this Trial Examiner as pure fiction. Felker, an experienced salesman, had been weaned away from a good job to assume the duties of his old job at a $5.00 a week increase, and then, it is said, that because of "basic", he had to be eliminated in favor of McGraw. The adoption of the new basic organization chart, in so far as elimination of jobs in the store was concerned, found only Felker and Mrs. Witter, two of the most outspoken union adherents among the employees, to be the only ones expendable. The Trial

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Examiner believes, and finds, that Felker was discharged because of his activities for and in behalf of and his membership in the Union. The Trial Examiner finds further

that his interrogation and threats made by DuFour concerning the Union, was in violation of Section 8 (a) (1) of the Act, and his discharge was in violation of Section 8 (a) (3) and Section 8 (a) (1). The Trial Examiner discounts completely the testimony of Gutemann and Brancato to the effect Felker was an unsatisfactory employee.

The discharge of Mrs. Witter

Irene Gladys Witter first was employed by the Respondent in 1942 for a period of approximately six months; she was again employed for about two months in 1947, being laid off December 24; in January, 1948, she was called back to work and worked until October, 1949 when she resigned. In June, 1950 she returned to work at the request of Oram, then store manager, and remained at work until she was discharged on August 19, 1954. During this last period of employment, she performed duties in many departments of the store in approximately 20 different capacities, including sales work, work in the stock room, at the mail order desk, in what is called unit control, and at the switchboard. In June 1954, Mrs. Witter together with a number of other employees attended a meeting at the home of Mrs. Agnes Hurst for the purpose of organizing a union in the store; at this meeting Mrs. Witter was given an application for membership in the union which she signed the following day and gave to Mrs. Hurst. Thereafter Mrs. Witter solicited signatures of other employees to authorization cards which she passed out, and she attended a union meeting in June, one in July and two in August. She had occasion several times to talk to William Buchholzer, an organizer for the Union who sometimes came into the store, and on one occasion Buchholzer talked to Rumble in the store after Rumble had observed him talking to Mrs. Witter.

Early in August she was questioned by DuFour as to whether she had signed a union card and she replied that she had, whereupon DuFour

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told her that she would loose her job "for fooling around with the Union". Again about that time DuFour told her that "he wished she would not get mixed up with the Union" because she was liable to lose her job. He reiterated his request for her not to get "mixed up" with the Union a day or two later, again telling her "you will only lose your job."

During the afternoon of August 19, two days after the Union election (in which Mrs. Witter voted) DuFour commented on the fact that she was wearing a union button and then said "Well, I wouldn't have anything to do with the Union or anybody in it, if I were you." At 4:00 p. m. that day, Mrs. Witter received her weekly pay, being paid up until the close of business for the prior day, Wednesday August 18. At 6:00 p. m. on the same day she was called to Brancato's office, and he told her that "he had to let her go." When she asked him the reason for her discharge he told her "I just can't carry you on the payroll any longer. You are a non-basic payroll. I can't carry you there any longer." Brancato then in answer to a question told her that she was fired, handed her her timecard for that day's work for her to sign, together and gave her a pay envelope containing that day's pay.

Rumble testified that the reason for her discharge was because she was found to be "unsatisfactory", although she had not at anytime theretofore had her attention called to any unsatisfactory service on her part in the store. Although Rumble testified that some employees had com-

plained about her, the same employees when called to testify, denied that they had complained about her to Rumble or to any other supervisory employee. The Respondent called Ruth Brewer, employed as a unit stock control clerk, in effort to show that Mrs. Witter when assigned to that department did not perform satisfactorily. She thought Mrs. Witter's work was as satisfacory as that of any of the other girls assigned to

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that department from time to time. Rumble testified that Mrs. Witter was unsatisfactory, as shown by a complaint to him made by Irene McTigue a department head; he could not remember when this complaint was made to him. Mrs. McTigue's testimony is to the effect that she did not complain about Mrs. Witter's work but that she asked Rumble if he would give Mrs. Witter the work he had for her so she could return to her department and work for her; and McTigue also testified that Mrs. Witter was a good worker.

The Respondent contended in this connection, that while at work at the catalogue desk, Mrs. Witter's work was unsatisfactory because she made a number of mistakes in the taking of written orders to be furnished to the customer from catalogue descriptions. Six or seven of these written orders, or copies thereof, were introduced into evidence. The Trial Examiner has examined them carefully, listened to the contention of the Respondent in this connection and to the testimony of Mrs. Witter, and considers that Mrs. Witter's explanation of the claimed inaccuracies on these orders is reasonable and explanatory of what could have happened in the taking of a few among many such orders. He does not believe that these comparatively inconsequential errors would be reasonable grounds for discharge or even discipline.

When Mrs. Witter was rehired in June 1950, she was not informed that she was put on a "non-basic" payroll and no one at any time subsequent thereto, ever notified her that she was an extra employee on a "non-basic" payroll. Mrs. Witter, an experienced saleslady, was discovered as an "extra", to be "unsatisfactory" after several years service, although she previously had been noticed as a "reserve" employee; nevertheless when Elliott and Levengood were engaged in the revision of the organization chart, she was found to be expendable. Rumble, apparently, had no say in the matter of the discharge of either Witter or Felker. The Trial Examiner believes, and finds, that Mrs. Witter was discharged because of her activities in the union and her membership in the union, and not because

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she was found to be not-needed because of the revision in the basic organization chart of the store.

Her discharge was in violation of Section 8 (a) (3) and 8 (a) (1) of the Act; her interrogation concerning her union activities and membership by DuFour, Brancato and others were in violation of Section 8 (a) (1) of the Act.

The Trial Examiner is of the opinion that Levengood and Elliott worked out the plan to get rid of two of the most active Union adherents by the use of a revision of the "basic". It would almost seem that DuFour was put into the Binghamton Store by Levengood so that he could observe the concerted activities of the employees and perhaps attempt to discourage union activities.[12]

[12] The Respondent inserted the following paid advertisement in the Binghamton Press, August 27, 1954, issue: "Help—Men or Women. Salesmen and Saleslaadies. Full or part time. Experience necessary. Apply at store office, Montgomery Ward." The Trial Examiner does not credit testimony to the effect that the advertisement was run for the purpose of hiring extra employees for the Christmas rush.

Concluding Findings

Section 8 (a) (1) of the Act, read in conjunction with Section 7, guarantees to employees, free of their employers' interference, restraint, or coercion, "the right to self-organization, to form, join, or assist labor organizations, * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *". When employer interference takes the form of discrimination in employment, which has the foreseeable effect of discouraging union membership, the employer's conduct is also within the prohibition of Section 8 (a) (3) of the Act. *Radio Officer's Union v. N. L. R. B.*, 347 U. S. 17. Here the Trial Examiner is satisfied that substantial evidence supports a finding that the Respondent interfered with, restrained and coerced its employees in violation of Section 8 (a) (1) of the Act; and that substantial evidence supports a finding that the Respondent violated Section 8 (a) (3) and (1)

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of the Act by discriminatorily discharging Felker and Witter. It is clear enough the the Respondent through interrogation of employees concerning their union membership or activities violated Section 8 (a) (1);[13] that by threatening its employees with loss of their jobs or other economic reprisals for membership in the Union or activities in support thereof, the Respondent violated Section 8 (a) (1) of the Act[14] and that by statements made to certain employees that the Respondent was informed as to those that were in favor of the Union and that they would

[13] *Graber Manufacturing Company*, 111 NLRB No. 20; *Blue Flash Express Inc.*, 109 NLRB No. 85; *Syracuse Color Press*, 103 NLRB 377, enf'd 209 F. 2d 596 (C. A. 2), cert. den. 347 U. S. 906.

[14] *Bausch and Lomb Optical Company*, 107 NLRB No. 157, enf'd 35 LRRM 2169 (C. A. 2) *Syracuse Stamping Co.*, 102 NLRB 230, enf'd 208 F. 2d 77 (C. A. 2).

be discriminated against because of their union membership, the Respondent violated Section 8 (a) (1) of the Act;[15] and by discriminatorily discharging Frank Felker and Gladys Witter because they joined, were active on behalf of or assisted the Union, or engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, the Respondent violated the provisions of Section 8 (a) (3) and (1) of the Act.

The Respondent contends that DuFour was not acting on behalf of the Respondent in making the statements attributed to him, that the Respondent was powerless to stop him because he was a non-supervisor, and

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that it follows that the charges must be dismissed. The Trial Examiner has found above and again finds on the preponderance of the evidence in the record herein that DuFour was, during the times relevant hereto, a supervisor within the meaning of the Act. Accordingly, the Respondent must be considered to have been bound and to now be bound by his activities in opposition to the efforts of the employees to engage in concerted activities for themselves and on behalf of the Union. Certainly, the predictions made by DuFour before the election as what might happen or as to what would happen to certain employees "if the Union came in" could readily result in discouragement of membership in the Union, and in the concerted activities of employees.

It is contended on behalf of the Respondent that the conversations of Brancato and Rumble, even if they occurred as related by witnesses presented by the General Counsel, "definitely fall into the category of casual,

[15] *Nashua Manufacturing Corporation*, 108 NLRB No. 117, and cases cited therein of footnote 7 of the Intermediate Report.

friendly, isolated instances", citing *Blue Flash Express, supra.* If the remarks of Rumble and Brancato stood alone, they might well be considered the sort of isolated remark which would not justify the issuance of an order in this case. However, these remarks, considered together with DuFour's unrestrained and demonstrated opposition of the Union, followed by the discharges of Felker and Witter, certainly cannot be ignored. The Trial Examiner finds that these remarks, taken in whole context, constitute violations of Section 8 (a) (1) of the Act.

The General Counsel alleges that the Respondent decreased the rates of pay of Felker and Mrs. Witter. The record shows that Felker, at the time of his discharge, was offered employment at $20 per week, which he refused. Mrs. Witter testified, after the Respondent offered testimony to the effect that she had been offered and refused to accept a job as switchboard operator, that in April she was told by Brancato that she was to "take the

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switchboard"; that she asked Brancato "if there was more money" and he said he would have to consult Rumble. The regular operator at that time was paid $53 per week; Mrs. Witter received $35 per week. The Trial Examiner finds that the General Counsel failed to prove that the rates of pay of Felker and Mrs. Witter actually were reduced during their employment by the Respondent.

IV. The Effect of the Unfair Labor Practices on Commerce

The activities of the Respondent, set forth in Section III of this Intermediate Report, occurring in connection with the activities of the Respondent described in Section 1, have a close, intimate and substantial relation to trade,

traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. The Trial Examiner has found that the Respondent has discriminated in regard to the hire and tenure of employment of Irene Gladys Witter and Frank Felker.

It will be recommended that the Respondent offer to each of them full and immediate reinstatement to former or substantially equivalent position and make she or he whole for the loss of pay she or he may have suffered as a result of the discrimination against them by payment to she or he of a sum of money equal to that which she or he would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his or her net earnings, the loss of pay to be

computed on a quarterly calendar basis in accordance with the formula adopted by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

Upon the basis of the foregoing findings of fact and upon the entire record of the case, the Trial Examiner has arrived at the following:

CONCLUSIONS OF LAW

1. Retail Clerks International Association, Local Union 1687, AFL, is a labor organization within the meaning of Section 2, (5) of the Act.

2. By discriminating in regard to the hire or tenure of employment of Irene Gladys Witter and Frank Felker the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a), subdivision (3) of the Act.

3. By such discrimination, and by interrogating its employees concerning their membership in and activities on behalf of the Union, and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a), subdivision (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2, subdivisions (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that Montgomery Ward & Co., Incorporated, its

officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to join or assist Retail Clerks International Association, Local Union No. 1687, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, by:

(1) Interrogating its employees concerning their union membership, activities or desires;

(2) Threatening its employees with discharge because of their union membership or union activities;

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which, it is found, will effectuate the policies of the Act:

(a) Offer to Irene Gladys Witter and Frank Felker the job formerly held by each of them, or substantially equivalent jobs, without loss of such employment rights as they had at the time of their respective discharges or any such rights as may have attached to each job in the interim of discharge and offer of re-employment.

(b) Make whole any loss of pay which may have been suffered by Irene Gladys Witter or Frank Felker in the way described in that portion of this Intermediate Report called the Remedy.

(c) Post in conspicuous places at its store at Binghamton, New York, in the room or place where persons employed customarily report for duty, and other places where notices to employees customarily are posted, copies of the notice attached hereto as an Appendix. Copies of this notice shall be furnished by the Regional Director for the Third Region and shall, after being duly signed by a representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter.

Appendix attached to Intermediate Report and Recommended Order.

(d) File with the Regional Director for the Third Region within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, a report in writing, setting forth in detail the steps which the Respondent has taken to comply therewith.

It is further recommended that unless the Respondent within twenty (20) days from the receipt of this Intermediate Report and Recommended Order notify the Regional Director for the Second Region that it will comply with the foregoing Recommendations, the National Labor Relations Board issue an order requiring it to take the action aforesaid.

Dated at Washington, D. C., this 18 day of April, 1955.

ARTHUR E. REYMAN
Trial Examiner

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APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER
of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in Retail Clerks International Association, Local Union 1687, AFL, or discourage activity in support of that organization, or any other labor organization, or discourage

any employee from exercising the right secured to him under the National Labor Relations Act by means of discriminatory discharge or discriminating in any manner in regard to hire, or tenure of employment, or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Retail Clerks International Association, Local Union 1687, AFL, or any other labor organization, to bargain collectively through representatives of their choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized is Section 8 (a) (3) of the Act, as guaranteed in Section 7 thereof.

WE WILL, offer Irene Gladys Witter and Frank Felker immediate and full reinstatement to their former positions and make each of them whole for any loss of pay suffered.

This notice must remain posted for 60 days from date hereof, and must not be altered, defaced or covered by any other material.

MONTGOMERY WARD & CO., INCORPORATED
(Employer)

Dated ..... By .....
(Representative) (Title)

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Decision and Order.

On April 18, 1955, Trial Examiner Arthur E. Reyman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner did not find as unfair labor practices other conduct alleged in the complaint to be unlawful. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report together with supporting briefs.[1]

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,[2] conclusions and recommendations of the Trial Examiner with the following additions and modifications.

1. The Trial Examiner found that department head Leonard DuFour was a supervisor as defined in the Act and that the Respondent was responsible

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for his conduct. The Respondent argues that it is not responsible for DuFour's statements because the Board

[1] The Respondent also requested oral argument. In our opinion the record, the exceptions and briefs fully present the issues and the positions of the parties. Accordingly, the request is denied.

[2] In the section of the Intermediate Report entitled "Union organization," the Trial Examiner inaccurately referred to the date that the Union filed a representation petition as February 16, 1954. Earlier in the Intermediate Report, under the section entitled "Preliminary Findings," the Trial Examiner correctly stated that the Union filed its petition on July 16, 1954. We correct the February date in the Intermediate Report to read July 16, 1954.

previously had conclusively determined that he was an "employee" and therefore DuFour had the constitutional right to express himself concerning union activities.[3]

As a department head, DuFour had a status different from that of other department heads. He directed the work of outside as well as inside salesmen. The evidence is clear that he had the authority either to hire or effectively to recommend the hiring of individuals working in his department and that the exercise of such authority was not merely clerical or routine in nature.[4] Accordingly, we find, as did the Trial Examiner, that DuFour was a supervisor within the meaning of Section 2 (11) of the Act.

The charging union filed a representation petition with the Board on July 16, 1954 seeking an election in a unit of all selling and non-selling employees at the Respondent's Binghamton, New York, store, including department heads, but excluding supervisors. Subsequently, the parties with the approval of the Regional Director agreed to the holding of a consent election in a unit of "all employees," excluding supervisors.[5] The stipulated unit contained no reference to department heads in general or DuFour in particular. However, the employee list used for determin-

[3] In its brief to the Board (p. 9) the Respondent states: "Respondent would not presume to guess what the Board would decide about DuFour's status as an employee under the stautory definition, in the event that such status were an open question in this proceeding."

[4] Section 2 (11) of the Act says: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

[5] Both the Union's petition and the parties' election agreement excluded certain of the store's top personnel in addition to the group exclusion of supervisors.

ing eligibility to vote in the election had DuFour's name on it and he was permitted to vote without challenge.[6]

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The representation case was never before the Board itself. The matter was handled at the regional office level by agreement of the parties. The Board was never asked to determine whether DuFour was or was not a supervisor. Neither was the Regional Director requested to make such a determination. The Regional Director merely approved the arrangements for the election agreed to by the Union and the Respondent. Nor is there evidence that the Union was in possession of all the evidence as to the status of DuFour and deliberately refrained from making the claim that he was a supervisor.[7] We hold, therefore, that the mere fact that DuFour was permitted to vote in the election by agreement of the parties is not the equivalent of a determination of his status by the Board.[8] Further, the fact that the Union may have agreed to the inclusion of DuFour in the unit cannot result in nullification of the statutory exclusion of supervisors from the definition of "employee" contained in the Act.[9] Nor can it prevent the General Counsel from contending that DuFour was a supervisor. Assuming *arguendo* that, as urged by the Respondent, the Union is estopped from asserting that Du-

[6] The customary practice is for a field agent of the Board to ask the employer for a payroll list of employees included in the unit. Union representatives then go over the list and raise objections, if any, to the inclusion or omission of names from the list. The field agent may also raise objections to the list if he is in possession of information indicating that an individual's name has been improperly omitted from or included on the list.

[7] It is clear that the Board would not entertain a post-election challenge based on the contention that a supervisor was improperly permitted to vote in the election. *Sears, Roebuck and Co.*, 114 NLRB No. 121.

[8] *Valentine Sugars, Inc.*, 102 NLRB 313, 314, and cases cited therein.

[9] *Crescent Ink and Color Company of Pennsylvania*, 100 NLRB 664, 665; *American Optical Company*, 104 NLRB 263, 269; *The Steel Products Engineering Company*, 106 NLRB 565, 576.

Four is a supervisor, that estoppel cannot operate against the General Counsel. The present case is a public proceeding by a public official against the Respondent, and not private litigation between the Union and the Respondent.

Statements made by a supervisor violate Section 8 (a) (1) of the Act when they reasonably tend to restrain or coerce employees. When a supervisor is included in the unit by agreement of the Union and the Employer and is permitted to vote in the election, the employees obviously regard him as one of themselves. Statements made by such a supervisor are not considered by employees to be the representations of management, but of a fellow employee. Thus they do not tend to intimidate employees. For that reason, the Board has generally refused to hold an employer responsible for the antiunion conduct of a supervisor included in the unit, in the absence of evidence that the

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employer encouraged, authorized or ratified the supervisor's activities or acted in such manner as to lead employees reasonably to believe that the supervisor was acting for and on behalf of management.[10] However, a supervisor, although mistakenly permitted to vote in the election by agreement of the parties, remains an arm of management. To the extent, therefore, that an employer's accountability for the conduct of a supervisor does not depend on employee reaction, the employer's responsibility for the supervisor's actions is not affected by the fact of inclusion in the unit. Hence, an employer is chargeable with knowledge of union activities acquired by such a supervisor. And the supervisor's statements

[10] *Indianapolis Newspapers, Inc.*, 103 NLRB 1750, 1751.

are admissible as evidence of his employer's motivation in discharging individuals. In neither of these situations is employee reaction a condition to employer responsibility.

Applying the above principles to the facts of this case, we find that, because of the lack of evidence that the Respondent actually or apparently authorized or ratified DuFour's course of conduct, the Respondent is not liable for such conduct. We shall therefore dismiss that portion of the complaint which alleged that the Respondent violated Section 8 (a) (1) of the Act in this respect.[11] However we also find that the Respondent is chargeable with the knowledge of union activities acquired by DuFour during the course of his interrogation of various employees, including Felker and Witter, and that his threats and statements to these and other employees may be considered in determining the reason why the Respondent discharged Felker and Witter.

2. The Trial Examiner found that the Respondent discriminatorily discharged employees Frank J. Felker and Irene Gladys Witter. The Respondent excepts to this finding.

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Frank J. Felker

The Respondent asserts that a reorganization in the store job structure brought about consolidation of two departments and that it discharged Felker, whose depart-

[11] The General Counsel filed exceptions to the Trial Examiner's failure to find additional 8 (a) (1) violations in DuFour's statements to employees Bright, Summers and Shoudy. In view of our disposition of the issues respecting DuFour's other allegedly coercive conduct, we find it unnecessary to pass upon these alleged omissions by the Trial Examiner.

ment was abolished, instead of others because he was the least satisfactory of the employees involved.

Felker had worked for the Respondent for about 12 years. He was first employed from June 1942 to January 1953, working up the salary scale from $35 to $60 per week. Early in 1953, shortly after Felker had begun work for another firm at $65 per week, the Respondent offered him an increase to $70 to return to his former position.[12] Felker accepted the offer and thereafter worked continuously for the Respondent until his discharge on August 23, 1954.

The Trial Examiner found, and the record amply supports the finding, that Felker was an excellent salesman. Store manager Rumble, assistant manager Brancato, former assistant manager Gutman, and Felker's fellow employee and successor, McGraw, all attested to his outstanding sales ability. The numerous awards won by Felker for high sales performance bear out the testimony of these witnesses.

Despite Felker's long history of satisfactory performance, the Respondent discharged him without notice on the day he returned from a week's vacation.

The events immediately preceding the discharge are illuminating of the Respondent's motivation. Between June and August 1954 the Union engaged in an organizational drive among the employees. The drive culminated in a Board-conducted election on August 17, 1954. Felker joined the Union, attended meetings, solicited members

[12] In addition to the flat salary, all of these jobs paid 4 percent commission on weekly sales in excess of $900.

and was outspoken in his support of the Union.[13] During this organizing period, Felker openly expressed his views about the Union to supervisor Leonard DuFour. When DuFour questioned Felker as to what he thought of the Union, Felker replied that he thought the

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Union was a good thing because of the protection it would afford the people in the store. On another occasion DuFour informed Felker "that the Company knows all of those that (sic) are in favor of the Union and they will lose their jobs." Shortly thereafter DuFour told Felker that, should the Union be successful, they would all lose their jobs because the Company would close the store.

DuFour also threatened employees Witter and Bright. He asked Witter if she had signed a union card and told her that she would lose her job because of her union activity. DuFour further insinuated to Bright that, if the Union did win, certain individuals in the store would be automatically squeezed out. At about the same time store manager Rumble was questioning employees about the Union, asking them whether they had been to any union meetings and whether they had joined the Union. Then, without notice on August 23, 1954, the Respondent discharged Felker.

The Respondent's store manager Rumble testified that he decided to discharge Felker because he had no basic payroll to support him after Felker's job was eliminated by a reorganization in the store. But the Respondent's then regional operating manager, Elliott, testified that the store manager could shift an employee, whose position

[13] In fact Felker returned to the store to vote in the election conducted during the period he was on vacation.

is eliminated, to another position. And another position was available. Within a month of Felker's discharge, the Respondent hired McHugh as a full-time employee at $50 a week (plus commissions) to replace Felker.[14] Whether additional payroll allowance was available due to resignations, as Rumble testified, or whether the Respondent had set a salary for Felker's replacement immediately after the latter's discharge, as McGraw testified,[15] the fact is that the Respondent did not offer a job to Felker when it could. It chose to hire a new inexperienced employee rather than

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Felker who had been one if its best salesman. It had offered Felker only a $20 a week part-time job after it discharged him, a job Felker declined.[16]

The Respondent enumerated a variety of complaints against Felker. These allegedly overrode Felker's excellence as a salesman and caused the Respondent to select Felker over McGraw in eliminating positions and subsequently to hire a new employee at a salary that would substantially wipe out the savings presumably effected by Felker's discharge. These complaints were that Felker was a poor merchandiser, maintained his department poorly and was unavailable to work overtime.

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[14] Store manager Rumble's testimony places McHugh's hiring as within 10 days of Felker's discharge. Employee McGraw's testimony places the date as the last week in September.

[15] According to McGraw, very shortly after Felker's discharge, Rumble asked him whether he preferred a woman assistant at $35 a week or a man at $50. This testimony tends to show that management knew the salary available for Felker's replacement immediately after Felker's discharge.

[16] Felker testified that after assistant manager Brancato released him by payment of wages and after Felker had signed his time card and receipt book, Brancato then offered Felker the part-time job. When Felker declined, saying to Brancato, "You know I can't accept that." Brancato answered, "No, I didn't think you could."

The complaint as to poor merchandising included failure to liquidate old stock. The Respondent points out that this criticism was made by former store manager Orman, by Rumble and Brancato in 1953 and thereafter. But the Respondent did not discharge Felker during the period of Orman's management. Rather, after Felker voluntarily left the Respondent's store in 1953 for a job elsewhere, the Respondent asked him to return at a higher salary. Moreover, assistant manager Brancato testified that Felker did reduce his 6-month old inventory by 75 percent and inventory of more than a year by 50 percent.[17] And, as Felker explained in testimony credited by the Trial Examiner, stock room personnel were responsible for sending him new merchandise rather than the old inventory, resulting in accumulation of the older stock. The Trial Examiner thus concluded that Felker handled the inventory as well as might reasonably have been expected.

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The exact criticism directed to other of Felker's qualities as a "merchandiser" is not entirely clear. The former assistant manager, Gutman, testified that Felker would order more than he needed. Store manager Rumble testified that Felker did not order merchandise as quickly as he should have and therefore his stock was not ample. But Rumble also said that Felker overbought items. Brancato, Rumble's assistant, said that Felker would either overbuy

[17] The store merchandise was known as B (more than 6 months old) and X (more than 1 year old) inventory. Brancato testified that the Respondent's standard required a 100-percent reduction in old inventory. When asked whether any department in the store reduced its inventory as much as Felker's department, Brancato replied that he was not qualified to answer the question without records. When asked further whether any department had no B and X inventory at all on hand, he replied in the affirmative but said that he could not name them without records. This testimony is too vague to be given probative value.

or underbuy. And district manager Levengood testified that Felker was "not the best buyer."

Felker, whom the Trial Examiner credited, testified that Gutman did not criticize his work. Moreover, Gutman, assistant manager when Felker accepted the Respondent's offer to return to the store in March 1953, although aware of Felker's alleged shortcomings, interposed no objection to Felker's return and said that it was his considered judgment that the store manager should ask Felker to return.

Rumble's and Brancato's testimony that Felker both underbought and overbought cannot be entirely reconciled. The record shows that the practice was for an employee to requisition merchandise only through a check list. The assistant manager or manager reviewed the list against a certain established sales allotment. If the employee ordering the goods exceeded that allotment, the reviewing official would not approve the order and the merchandise could not be bought. Thus overbuying was controlled at a level higher than Felker's. Rumble and Brancato gave no examples of Felker's underbuying, and Levengood did not elaborate on Felker's alleged deficiencies in buying merchandise.[18]

The criticism by the Respondent's officials of Felker's counter maintenance, saying that he was poor at changing counter displays and that counters were not clean and neat seems hardly a factor that would outweigh Felker's usefulness as a top salesman. And we, like the Trial

[18] Levengood's criticism of Felker's buying ability was too general to carry much weight. We note too that Levengood criticized Felker's sales ability, a criticism completely at odds with that of Felker's superiors and fellow employees. We therefore question the soundness of Levengood's criticism.

Examiner, find no reason to discredit employee McGraw who testified that Felker's department, like others in the

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basement, was difficult to keep clean and orderly and that Felker's department was not less clean than other basement departments.[19]

Finally, the Trial Examiner found that the Respondent had no cause to complain about Felker being unavailable for overtime work. The Respondent's store managers testified that Felker was unavailable because of his obligations to automobile riders whom he drove to and from work. Felker, however, testified that his regular 44-hour week required working one night a week until 7 o'clock, a requirement that he fulfilled, and that he never refused to work overtime.[20] Further, according to former assistant manager Gutman, the Respondent permitted Felker at times to begin work earlier than usual in the morning rather than to work late at night. In view of these facts, we conclude, as did the Trial Examiner, that any alleged unavailability for overtime work played no part in the Respondent's decision to discharge Felker.

Store manager Rumble testified that the Respondent ran an advertisement in the local newspaper periodically and particularly to build an employee reserve for "Ward Week" beginning about October 15, Thanksgiving and the

[19] The Trial Examiner credited Felker's testimony in finding that store manager Rumble seldom appeared in Felker's basement department. He erroneously included Brancato in this finding. We do not rely on the erroneous inclusion. Felker's testimony referred only to Rumble's infrequent visits.

[20] Felker mentioned that in late June of 1954 he had a dispute with assistant manager Brancato about whether the Company should buy his evening meal because he lived too far from the store to go home for his dinner and return. Felker's testimony refers to the Company's payment for an employee's evening meal in such circumstances as a condition specified in "our basic book of employment." Thereafter, Felker said, the employees voted to work additional time immediately after the store closed at 5 p. m.

Christmas season. The Respondent advertised for employees on August 27, four days after it discharged Felker. The advertisement did not state that the jobs offered were only temporary or seasonal. The Trial Examiner did not credit Rumble's explanation for the advertisement. We see no reason to disturb his resolution on credibility.

Like the Trial Examiner, we believe that a preponderance of the evidence demonstrates the discriminatory nature of Felker's discharge.

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IRENE GLADYS WITTER

The facts surrounding the Respondent's discharge of employee Witter fall into a similar pattern.

Witter had worked for the Respondent at various times since 1942. She had worked continually and on a full time basis for 4 years before her discharge. The employees who had worked with Witter—Brewer, McTigue and Marold, as well as the previous store manager, Orman—all thought she did a satisfactory job.[21]

Like Felker, Witter was discharged without notice. This discharge on August 19, 1954, two days after the Union election, was coincident with Witter's announced Union preference. Early in August, while the Union was conducting its organizing, supervisor DuFour asked Witter whether she had signed a union card. Witter replied that she had, telling DuFour that she had "waited a long

[21] Employees Brewer, McTigue and Marold testified at the hearing. Orman's views are in a letter, dated July 24, 1954, addressed to the State Civil Service Commission, stating that he found Witter "honest and industrious and interested in her work" and that he "considered her a satisfactory employee" whom he was "pleased to recommend. * * *"

time to see this happen."[22] Like the similar remarks that he made to Felker, DuFour told Witter that she would lose her job "fooling around with the Union." He repeatedly advised her not to "get mixed up" with the Union as she would lose her job. These remarks were but a repetition of DuFour's similar threats to Felker and his veiled prediction to employee Bright that if the Union were successful, "certain individuals in the store would be automatically squeezed out."

Witter encountered DuFour again on the afternoon she was discharged. When he commented on her wearing a union button, Witter said, "Yes, I am proud of that button. I waited a long time to wear one." Again he advised her that he would not have anything to do with the Union or anybody in it if he were in her position. That same day the Respondent discharged Witter.

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The Trial Examiner rejected the Respondent's explanation that a reduction in its "extras" force was necessary and that it chose Witter because she was the least satisfactory employee in the group selected for reduction. We believe that he correctly evaluated the evidence bearing on this explanation.

It appears that the allowable funds for the "extras" payroll for the period ending the day *before* Witter's discharge was $46 more than the normal payroll allotment. Witter's salary was but $35 weekly and was easily within that payroll allowance. The record also shows that, in the weeks following Witter's dicharge and continuing an-

[22] And store manager Rumble had observed Witter talking to the Union's organizer on a day preceding the Union election of August 17, 1954.

til the end of the year, the Respondent's payroll showed an excess payroll allowance in every week except two (falling in December). In selecting Witter the Respondent discharged a full-time, experienced employee rather than a casual one. We regard as questionable the Respondent's explanation that it did not offer Witter, an experienced employee, available part-time work because it felt that she could not afford to accept it.

Further, the Respondent's assertion as to the necessity for eliminating jobs cannot be supported when, less than 10 days after Witter's discharge, the Respondent advertised in the local newspaper for additional employees; it hired a new employee to replace Witter 2 weeks after it discharged her; and it made no effort at all to recall Witter.

The Respondent introduced voluminous exhibits which it offered as proof of Witter's incompetence. The exhibits are largely sales slips on which, the Respondent contends, Witter omitted vital information describing merchandise or identifying the customer. In agreement with the Trial Examiner's conclusions, we find reasonable Witter's explanation of the claimed inaccuracies.[23]

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In sum, the record does not support the Respondent's contention that it discharged employees Felker and Witter for reasons of economic necessity. We have carefully considered all the evidence, and we conclude, as did the Trial Examiner, that the Respondent discharged these two employees to rid itslf of active union proponents. We are

[23] For example, Witter explained that in instances where the sales slip failed to describe the "color" of a spike tooth harrow, there was only one color and the stock clerk filling the order would not be misled by the sales slip. Similarly, in an instance of not describing the color of a double picket fence, Witter said that this item was made of copper, and was not ordinarily described by its color. And a wood picket fence, not described by color, Witter said was always white and that stock clerks were aware of this.

compelled to this conclusion after close examination of the record and particularly because the reasons offered by the Respondent in justification of the discharges do not stand up under scrutiny.[24] Accordingly, we find that the Respondent violated Section 8 (a) (3) and (1) of the Act in discharging Frank J. Felker and Irene Gladys Witter.

3. The Trial Examiner found that the Respondent also interfered with, restrained and coerced its employees in violation of Section 8 (a) (1) by store manager Rumble's questioning of employees Shoudy, Dino and Marold as to union activity and assistant manager Brancato's remarks to employee Witter. The Respondent contends that Rumble and Brancato were only joking.

We adopt the Trial Examiner's finding that Rumble's questioning of employees as to whether they had been to any Union meetings and whether they had joined, when considered together with the discriminatory discharges of Felker and Witter, violated Section 8 (a) (1).

However, we find merit in the Respondent's contention that assistant manager Brancato's remark to Witter about voting in the election was made jokingly and did not tend to restrain Witter in her right to vote in the election. We shall therefore dismiss the complaint insofar as it alleges an 8 (a) (1) violation by Brancato's statements to Witter.

ORDER.

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations

[24] *N. L. R. B. v. Dant*, 207 F. 2d 165 (C. A. 9), reversed on unrelated jurisdictional grounds, 344 U. S. 375; *N. L. R. B. v. Bird Machine Co.*, 161 F. 2d 589, 592 (C. A. 1) and cases there cited.

Board hereby orders that the Respondent, Montgomery Ward & Co., Incorporated, Binghamton, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Retail Clerks International Association, Local Union No. 1687, AFL-CIO, or in any other labor organization of its employees; by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment;

(b) Interrogating its employees concerning their union membership, union activities, or views about Retail Clerks International Association, Local Union No. 1687, AFL-CIO, or any other labor organization, in a manner constituting interference, restraint or coercion in violation of Section 8 (a) (1);

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist Retail Clerks International Association, Local No. 1687, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Frank J. Felker and Irene Gladys Witter immediate and full reinstatement to their former, or substantially equivalent positions, without prejudice to seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them, in the manner provided in the section of the Intermediate Report entitled, "The remedy:"

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(b) Preserve and make available to the Board, or its agents, upon request, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the rights of employment under the terms of this Order:

(c) Post at its store in Binghamton, New York, copies of the notice attached hereto and marked Appendix A.[25] Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Third Region, in writing, within ten (10) days from the date of this

[25] If this Order is enforced by decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER"

Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent violated Section 8 (a) (1) of the Act by the conduct of Leonard DuFour and John Carl Brancato.

Dated, Washington, D. C.

BOYD LEEDOM,
Chairman.

ABE MURDOCK,
Member.

(SEAL) NATIONAL LABOR RELATIONS BOARD.

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MEMBER PETERSON, dissenting in part:

I join with my colleagues in that part of their decision sustaining the complaint allegations that the Respondent discharged employees Felker and Witter in violation of Section 8 (a) (3) and (1), and coerced its employees in violation of Section 8 (a) (1) by the conduct of store manager Rumble. I also join with them in dismissing the complaint allegation as to assistant store manager Brancato's conduct.

Contrary to the majority decision, I would sustain the allegation that the Respondent interfered with, coereed and restrained its employees in the exercise of their right to self-organization by supervisor DuFour's conduct in in-

terrogating employees as to union activities and in threatening employees with loss of their jobs if the Union were successful.

The Respondent does not dispute DuFour's threats to employees Bright, Felker and Witter. As the Trial Examiner found, DuFour questioned Bright before the election as to whether he had been approached by any of the union members, and when Bright replied that he had not, DuFour told him not to let the Union influence his thinking, that the Union did not have a chance of winning the election. DuFour added to Bright that if the Union did win certain individuals in the store would be automatically squeezed out.

These predictions of job loss to Bright were made in more direct fashion to employees Felker and Witter, the same employees who later lost their jobs on account of their union activity. DuFour told Felker outright, after Felker expressed pro-union sentiments, that "the Company knows all of those that (sic) are in favor of the Union and they will lose their jobs." On another day shortly before the election, DuFour warned Felker that "if the Union comes in, we'll all lose our jobs because Montgomery Ward will close the store."

Similarly, in early August, DuFour questioned Witter whether she had joined the Union and, upon her affirmative answer, told her that she "would lose (her) job fooling around with the Union." Still later he told

her that he "wish(ed) she would not get mixed up with this union business" because she was "liable to lose (her) job." On another occasion DuFour reiterated his threat to Witter

not to get "mixed up" with the Union saying that she would only lose her job.[26]

There can be no question that, in the usual case, the Board would hold such threats by a supervisor to be unlawful. And, when considered in context with the discriminatory discharges of two of the people to whom they were addressed, their coercive character is unmistakable. Indeed that part of the majority decision in which I concur finds the Respondent's discriminatory motivation, in discharging Felker and Witter, revealed by DuFour's threats. It seems to me that there is an apparent inconsistency in the majority's refusal to find as unlawful DuFour's threats while at the same time tracing the Employer's responsibility for the discriminatory discharges through this very conduct on the ground that the supervisor "remains an arm of management."

I would hold the Respondent answerable for DuFour's coercive conduct. If DuFour is a part of management, any question of authorization or ratification of his actions is beside the point. If he is a part of management in any sense, employees are no less coerced if he voted in the election than if he did not vote. This is particularly true where, as here, DuFour could not properly have been in the bargaining unit. The language of the parties' consent

[26] DuFour testified, as the Trial Examiner found, that he was opposed to the Union and that he had not hesitated to express his opposition, saying that he was entitled to voice his anti-union opinions. At least one of the Respondent's store officials, assistant manager Brancato, was aware that DuFour was doing just that. Brancato acknowledged that employee Hurst asked him why DuFour could talk about the Union the way he did. Brancato testified that he told Hurst that what DuFour said was his own business. There is no evidence that Brancato or any other responsible official made any effort to put a stop to DuFour's conduct or to disassociate the Respondent from it. Store manager Rumble also may have known of DuFour's activity for, according to DuFour, Rumble told him not to discuss the Union around the offices but to "please step outside into the public part of the store before I carried on any discussions as far as union activities went."

agreement specifically excluded supervisors. This excluded him. But in any event the words of the statute must be given overriding consideration.

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They expressly exclude supervisors from the definition of "employee(s)" entitled to an election.[27] The majority relies on this statutory policy in holding that the inclusion of DuFour in the unit at the time of the election cannot operate to prevent a determination at this time by the Board that DuFour was a supervisor. Once that determination is made there is no reason to relieve the Respondent of the consequences flowing from it. It strains the meaning of words to hold, as does the majority, that DuFour's threats of discharge and of job loss by closing the plant "do not tend to intimidate employees." The majority reasons that there was no intimidation because DuFour was included in the unit and permitted to vote. Whether words intimidate or tend to do so should not depend on the accidental classification of names on the voting eligibility list. No error of placement by the Employer in drawing up the list or failure by the Union to challenge a voter can detract from DuFour's coercive conduct in his position as a supervisor. I would hold the Respondent accountable for that conduct and specifically enjoin for the future the commission of it.

Dated, Washington, D. C.

IVAR M. PETERSON,
Member.

NATIONAL LABOR RELATIONS BOARD.

[27] Section 2 (3) and (9) of the Act.

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APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 1687, AFL-CIO, or in any other labor organization of our employees, by discharging or refusing to reinstate any of our employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their union membership, union activities, or views about RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 1687 AFL-CIO, or any other labor organization, in a manner constituting interference, restraint or coercion, in violation of Section 8 (a) (1).

WE WILL offer to Frank J. Felker and Irene Gladys Witter immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them.

Appendix A attached to Decision and Order.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of the right to self-organization, to form, join or assist RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL NO. 1687, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

MONTGOMERY WARD & CO., INCORPORATED.
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Petition for Enforcement of an Order of the National Labor Relations Board.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

—o—

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

MONTGOMERY WARD & CO., INCORPORATED, Respondent.

—o—

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Montgomery Ward & Co., Incorporated, Binghamton, New York, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "Montgomery Ward & Co., Incorporated and Retail Clerks International Association, Local Union No. 1687, AFL-CIO," Case No. 3-CA-825.

In support of this petition the Board respectfully shows:

(1) Respondent is an Illinois corporation engaged in business *in the* State of New York, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on February 29, 1956, duly stated its

findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 13 of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which relate specifically to the Respondent herein, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

MARCEL MALLET-PREVOST,
Assistant General Counsel,

NATIONAL LABOR RELATIONS BOARD.

Dated at Washington, D. C., this 28th day of August, 1956.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 264

MONTGOMERY WARD & CO., INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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IN THE

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OCTOBER TERM, 1957.

NO.

MONTGOMERY WARD & CO., INC.,

Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Montgomery Ward & Co., Incorporated, petitioner, prays that a writ of certiorari issue to review the decree entered by the United States Court of Appeals for the Second Circuit on April 5, 1957, enforcing a decision and order of the National Labor Relations Board.

OPINIONS BELOW

This case originated as an unfair labor practice proceeding before the National Labor Relations Board. The record contains the Intermediate Report and Recommended Order of the Trial Examiner (R. 339)[1], the Decision and Order of the Board (R. 387), and the dissenting opinion of Member Peterson (R. 404). The Board's decision is reported in 115 NLRB 645.

The Court of Appeals filed an original opinion (Appendix, *infra*, p. 11-A), and a supplemental opinion on denial of rehearing, modifying the original opinion (App. 23-A). The Court's opinion as modified is reported in 242 F. 2d 497.

JURISDICTION

The decree here sought to be reviewed (App. 20-A), enforcing the Decision and Order of the National Labor Relations Board against petitioner, was entered on April 5, 1957. A petition for rehearing was denied on April 15, 1957 (R. 440). The jurisdiction of this Court is invoked pursuant to 28 USC Sec. 1254(1).

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[1] The Joint Appendix printed for the use of the court below, together with the proceedings below, has been filed as the Record here, pursuant to Rule 21, Par. 3. Nine additional copies of the Joint Appendix have also been filed, pursuant to Rule 21, Par. 4. Record references in this petition are to pages of the Joint Appendix.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Board may lawfully find wrongful intent to discharge, in violation of Section 8(a)(3) of the National Labor Relations Act as amended, by imputing as a matter of law to petitioner's management the knowledge and anti-union intent of a subordinate department head who did not participate in the discharges and had no authority over the discharged employees, while holding that the actual knowledge and intent of petitioner's management are immaterial.

2. Whether the National Labor Relations Board may lawfully base a finding of wrongful discharge, in violation of Section 8(a)(3) of the National Labor Relations Act as amended, on the knowledge and intent of a subordinate department head, when (a) department heads were specifically included in the unit previously petitioned for by the charging union, (b) department heads voted in the consent election conducted by the Board's Regional Director, and (c) no steps were taken by any one to challenge the ballots of department heads or to alter their status as employees whose right to free speech was protected by the Act and the First Amendment to the United States Constitution.

3. Whether the National Labor Relations Board's finding of wrongful discharge, in violation of Section 8(a)(3) of the National Labor Relations Act, as amended, is supported by substantial evidence on the record considered as a whole, when there is uncontradicted evidence that petitioner's management did not know the union status of the discharged employees, and the Board reached its conclusion of anti-union intent by imputing to said management the knowledge and anti-union intent of a subordinate department head and by holding that the undisputed facts

advanced by petitioner as economic grounds for the discharges were not in its opinion adequate.

4. Whether the National Labor Relations Board's finding that petitioner unlawfully interfered with, restrained and coerced its employees, in violation of Section 8(a)(1) of the National Labor Relations Act as amended, is supported by substantial evidence on the record considered as a whole, when the finding is based on two joking or casual inquiries addressed to employees by petitioner's store manager, containing no threat of reprisal or force or promise of benefit, and the undisputed evidence shows that the employees addressed were not in fact intimidated by the inquiries.

CONSTITUTIONAL PROVISION, STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the following Constitutional Provision, Statutes and Regulations involved in this case are set out verbatim in the Appendix at the pages respectively indicated:

1. The First Amendment to the Constitution of the United States. (App. 1-A).

2. Sections 2(3), 7, 8(a), 8(c), 9(b), 9(c), 10(b), 10(e) and 14(a) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (49 Stat. 449, 61 Stat. 136, 29 USC §§ 152, 157, 158, 159, 160 and 164). (App. 1-A).

3. Sections 102.5, 102.54(b) and 102.61 of the National Labor Relations Board's Rules and Regulations (29 Code of Federal Regulations, Secs. 102.5, 102.54(b) and 102.61). (App. 5-A).

4. Section 101.18 of the National Labor Relations Board's Statement of Procedure (29 Code of Federal Regulations, Sec. 101.18). (App. 9-A).

STATEMENT OF THE CASE

After the filing of a charge, an additional charge and a first amended charge by Retail Clerks International Association, Local Union No. 1687, AFL, the General Counsel of the National Labor Relations Board through the Regional Director of the Board for the Third Region on November 26, 1954 issued a complaint against petitioner, alleging violations of Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act, as amended (hereafter referred to as "the Act").

Petitioner operates numerous retail stores throughout the United States, including a store at Binghamton, New York (R. 340). At the time of the events herein described, there were 28 departments in the store, each under the supervision of a department head (R. 344). Aside from the manager and assistant manager, there were 83 employees (R. 10), including the department heads. Leonard DuFour and Frank Felker were department heads of the appliance and farm equipment departments, respectively (R. 350, 358). Gladys Witter was an extra clerk (R. 314) assigned at that time to another department (R. 149). DuFour had no authority over either Felker (R. 350, 358) or Witter (R. 169).

The charge as amended alleged that petitioner wrongfully discharged Felker and Witter, as well as two other employees of the Binghamton store, Gertrude Stoddard and Charles White, on various dates between August 11 and September 18, 1954, and that petitioner by these and other acts interfered with, restrained and coerced the employees of that store in the exercise of their rights under Section 7 of the Act. The complaint eliminated the charge concerning Stoddard. At the commencement of the hearing the charge was withdrawn as to White. The case pro-

ceeded to hearing before the Board's Trial Examiner on the remaining charges, as amplified by a statement of particulars filed by the General Counsel. The particulars based the charges on the alleged conduct of Rumble, the store manager, Brancato, the assistant store manager, and DuFour.

Petitioner denied the alleged violations of the Act, and also pleaded affirmatively that an election had been held among its employees at the Binghamton store on August 17, 1954, on the petition of the same union making the charge; that the union had agreed to the inclusion of DuFour as an employee entitled to vote; that the election had been supervised by the Regional Director of the Board; and that in view of these facts the union was estopped from claiming that DuFour was a supervisor, and his status as an employee had been determined by the Board until such time as it was set aside in some direct proceeding (R. 43-44).

As the Court of Appeals' opinion shows (App. 14-A to 16-A), there was no evidence of any anti-union activity by or on behalf of petitioner, other than the anti-union remarks made by DuFour in private conversations with fellow employees. There was no evidence that these remarks were authorized by petitioner's management or were subsequently made known to it. Notwithstanding the insinuation of the Court of Appeals to the contrary (App. 17-A), there is no claim, no evidence and no finding that DuFour was a management agent or spy.

The Trial Examiner filed an Intermediate Report and Recommended Order (R. 339), in which he found that DuFour was a supervisor who "stood in the place of management" when he made the anti-union statements on which the complaint was predicated (R. 351). He conceded that certain inquiries about the union attributed to

store manager Rumble and assistant manager Brancato, if they stood alone, "might well be considered the sort of isolated remark which would not justify the issuance of an order in this case" (R. 381). He concluded, however, that these inquiries, together with DuFour's expressed opposition to the union, followed by the discharges of Felker and Witter, constituted violations of Sections 8(a)(1) and 8(a)(3) of the Act (R. 381). He recommended an order directing petitioner to cease and desist from interfering with, restraining or coercing its employees by interrogating them or threatening their discharge; requiring petitioner to reinstate employees Witter and Felker; and requiring petitioner to post notices of compliance (R. 383).

Petitioner appealed to the Board, which entered a Decision and Order modifying in some respects the recommended order of the Trial Examiner (R. 387). The Board set aside the Examiner's finding that petitioner was liable for DuFour's conduct and dismissed that portion of the complaint which alleged that petitioner violated Section 8(a)(1) of the Act in this respect (R. 391). The Board also found no violation of the Act by assistant manager Brancato (R. 401). However, the Board found that petitioner was chargeable with the knowledge of union activities acquired by DuFour during his private conversations with various employees, and that his threats and statements to these employees might be considered in determining why petitioner discharged Felker and Witter (R. 391).

Based principally on DuFour's knowledge and intent thus imputed to petitioner, the Board concluded that petitioner was guilty of unlawful discharge of employees Felker and Witter (R. 400). It also found unlawful restraint and coercion, in violation of Section 8(a)(1), based on store manager Rumble's inquiries concerning the union

in two conversations with employees (R. 401). The Board modified the recommended order to eliminate that portion which required petitioner to cease and desist from threatening its employees, but in all other respects adopted the recommended order in substance (R. 402).

Member Peterson dissented, contending that petitioner should have been held liable for DuFour's conduct. He said (R. 406):

> "It seems to me that there is an apparent inconsistency in the majority's refusal to find as unlawful DuFour's threats while at the same time tracing the Employer's responsibility for the discriminatory discharges through this very conduct on the ground that the supervisor 'remains an arm of management.'"

Pursuant to the provisions of Section 10(e) of the National Labor Relations Act as amended (61 Stat. 146, 29 U.S.C. Sec. 160 (e)), the Board petitioned the United States Court of Appeals for the Second Circuit to enforce its Order. The Court granted enforcement. It wrote an original opinion (App. 11-A) and a supplemental opinion on denial of rehearing (App. 23-A). The Court held that the Board was entitled to base its finding of petitioner's motivation for the discharges on DuFour's knowledge of union activities and statements, which the Court found that "the Board is at liberty to impute to the company" (App. 19-A). The Court further held that the fact that DuFour voted in the election "has no necessary connection with his also being an agent of management for purposes of Section 8(a)(3)." (App. 18-A). The Court cited other alleged evidence to support its conclusion (App. 19-A), although it admitted error and deleted reference to part of this alleged evidence when the opinion was modified on denial of rehearing (App. 24-A). The Court also originally said that petitioner did not dispute

the finding that it was guilty of a Section 8(a)(1) violation (App. 20-A), but on rehearing admitted that the finding was disputed (App. 24-A). It then held that the remaining evidence was sufficient on both charges.

Additional pertinent facts will be set forth at appropriate places in the argument.

REASONS FOR THE ALLOWANCE OF THE WRIT

I. The National Labor Relations Board may not lawfully find wrongful intent to discharge, in violation of Section 8(a)(3) of the National Labor Relations Act, by imputing as a matter of law to Petitioner's management the knowledge and anti-union intent of a subordinate department head who took no part in the discharges and had no authority over the discharged employees.

The National Labor Relations Board and the Court below have held that, under a complaint alleging wrongful discharges in violation of Section 8(a)(3) of the National Labor Relations Act as amended, petitioner's real motive for the discharges is immaterial. They have held that petitioner is charged as a matter of law with the private anti-union attitude of a subordinate department head for whose conduct petitioner is not liable, even though that attitude was not known to petitioner's management and was opposed to declared management policy.

This holding is contrary to the rule laid down by this Court in *Radio Officers' Union, etc.* v. *N.L.R.B.* (1954), 347 U.S. 17, and contrary to the decisions of the Courts of Appeals in other circuits.

The undisputed evidence shows that the decisions to discharge employees Felker and Witter were made by regional operating manager Elliott, district manager Levengood, store manager Rumble, or assistant store manager Brancato (R. 226-228, 231-233, 306-308, 115-116, 320-323). The Board and the Court below, however, determined the reason for the discharges from the words of department head DuFour (R. 393, 398-399; App. 17-A, 19-A and 23-A).

The position of the Board is shown by the following paragraph in its decision (R. 391):

> "Applying the above principles to the facts of this case, *we find that, because of the lack of evidence that the Respondent actually or apparently authorized or ratified DuFour's course of conduct, the Respondent is not liable for such conduct.*' We shall therefore dismiss that portion of the complaint which alleged that Respondent violated Section 8(a)(1) of the Act in this respect. However, *we also find that the Respondent is chargeable with the knowledge of union activities acquired by DuFour during the course of his interrogation of various employees, including Felker and Witter, and that his threats and statements to these and other employees may be considered in determining the reason why the Respondent discharged Felker and Witter.*" (Emphasis added.)

In accordance with this position, neither the Trial Examiner nor the Board in the course of their long and detailed reports made any inquiry or any finding as to whether petitioner's management *in fact* had knowledge of DuFour's anti-union remarks and Felker's and Witter's interest in the union, or whether DuFour's remarks *in fact* represented the view of petitioner's management.

The opinion of the Court of Appeals proceeds on the same theory. Thus the Court says that DuFour's "knowledge of union activities and statements as to employer motivation were property imputed to Montgomery Ward" (App. 17-A), and the Court refers to "DuFour's knowledge of union activities and statements of employer intention which we find the Board is at liberty to impute to the company" (App. 19-A).

The only expression in the Court's opinion which might be construed as evincing an interest in the real motives of petitioner's management is the statement that DuFour

"could easily have been very high in management circles without the other employees having any notion of this." (App. 17-A). If the Court intended by this statement to assert as a conclusion of *fact* that the Board was warranted in finding that DuFour was "very high in management circles" the Court must necessarily have found as a *fact* that he was a management spy. That is a conclusion which the Board did not make and which the evidence does not support. Abundant and undisputed evidence shows that DuFour spoke his own mind alone, in private conversations with other employees, and that he did not represent the management view (R. 33-38, 233, 263, 302-303, 305, 330-331).

Thus the following question is squarely presented for decision here: *Can the intent with which petitioner's regional manager, district manager, store manager and assistant manager discharge an employee be determined solely from the state of mind of another person which is not found to be known to them?* We submit that it can not.

The rule applicable to alleged Section 8(a)(3) violations has been clearly set forth by this Court in *Radio Officers' Union, etc.* v. *N.L.R.B.* (1954), 347 U.S. 17, *supra*, where the Court said, p. 43:

> "The relevance of the motivation of the employer in such discrimination has been consistently recognized under both §8(a)(3) and its predecessor. In the first case to reach the Court under the National Labor Relations Act, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 628, 81 L. Ed. 893, in which we upheld the constitutionality of §8(3), we said with respect to limitations placed upon employers' right to discharge by that section that 'the [employer's] true purpose is the subject of investigation with full opportunity to show

> the facts.' In another case the same day we found the employer's 'real motive' to be decisive and stated that 'the act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees.' Courts of Appeals have uniformly applied this criteria, and writers in the field of labor law emphasize the importance of the employer's motivation to a finding of violation of this section. Moreover, the National Labor Relations Board in its annual reports regularly reiterates this requirement in its discussion of §8(a)(3). For example, a recent report states that 'upon scrutiny of all the facts in a particular case, the Board must determine whether or not the employer's treatment of the employee was motivated by a desire to encourage or discourage union membership or other activities protected by the statute.' "

The decisions of the Courts of Appeals are to the same effect. It will suffice to quote one case, as illustrative.

> "So far as the National Labor Relations Act, 29 U.S.C.A. §151 *et seq.*, goes, the employer may discharge, or refuse to reemploy for any reason, just or unjust, except discrimination because of union activities and relationships. In the matters now concerning us, *the controlling and ultimate fact question is the true reason which governed the very person who discharged or refused to reemploy in each instance.*" (Emphasis added)
>
> *N.L.R.B. v. Tex-O-Kan Flour Mills Co.*, (CCA 5th, 1941), 122 F. 2d 433, 438.

The *Tex-O-Kan* case was cited on this point with approval in *N.L.R.B. v. Stafford* (CA 8th, 1953), 206 F. 2d 19, 23.

The foregoing cases recognize the fundamental distinction between interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the Act in violation of Section 8(a)(1), and discriminatory

discharge of an employee to encourage or discourage union membership in violation of Section 8(a)(3). In the former case the policy of the Act is to leave the employees free to choose their bargaining representative uncoerced by any conduct which they might reasonably believe is attributable to the employer. In the latter case the policy of the Act is to protect an employee from discharge for the purpose of discouraging union activity, but not to protect him from discharge for any other reason; and the question necessarily becomes the motive animating the employer's representative who actually caused the discharge. It is true that his motive may be shown by extrinsic circumstances having a reasonable tendency to prove his state of mind. It cannot, however, be shown by circumstances tending to prove only someone else's state of mind.'

A reading of the Board's decision and the Court's opinion clearly shows that the finding of wrongful discharge rests primarily, if not exclusively, on the anti-union remarks of the department head DuFour, who had no authority over the discharged employees. The Board has found that petitioner is not liable for these remarks. It has failed to find that these remarks in any way characterized the motivation of the regional manager, district manager, store manager and assistant manager, who participated in the decisions to discharge. It has contented itself with charging these persons as a matter of law with DuFour's private intentions.

We submit that this attempt to convert a question of fact into a question of law leaves the order and decree below without support in the Record, and contrary to the well considered decisions of this Court and Courts of Appeals in other circuits. It presents a question of great importance in the construction of the National Labor Relations Act, as amended, which should be decided by this Court.

II. The National Labor Relations Board may not lawfully base a finding of wrongful discharge, in violation of Section 8(a)(3) of the National Labor Relations Act, on the knowledge and intent shown by the anti-union remarks of a subordinate department head who contemporaneously voted as a non-supervisory employee on petition of the charging union in a consent election conducted by the Board.

It is abundantly clear from the Board's decision and the lower Court's opinion that the finding of intent to discharge for union activity in violation of Section 8(a)(3) of the Act was based primarily on DuFour's utterances in private conversations. Contemporaneously with these utterances DuFour voted as an employee in an election conducted by the Board's Regional Director. The Board has found that under these circumstances he did not represent management in making the remarks, but it has nevertheless charged management with his intentions. In affirming the Board, the Court below expressly held that "the fact that DuFour voted in the election has no necessary connection with his also being an agent of management for purposes of Section 8(a)(3)." (App. 18-A). Thus the same employee at the same time and by the same verbal acts becomes a non-supervisor for the purpose of talking and voting, but a supervisor for the purpose of thinking the thoughts expressed by his words.

This holding is directly contrary to the decision of the Third Circuit in *N.L.R.B.* v. *James H. Matthews & Co.* (CCA 3rd 1946) 156 F. 2d 706. It raises in an acute form a problem which Mr. Justice Douglas foresaw in his dissenting opinion in *Packard Motor Car Co.* v. *N.L.R.B.* (1947), 330 U.S. 485, 497. And it emasculates Sections 2(3) and 14(a) of the amended Act (App. 1-A and 5-A), by which a clear line is drawn between management and

employee. Under those sections the exercise of rights as an "employee" has been since 1947 wholly inconsistent with simultaneous responsibility as a "supervisor."

The applicable facts are undisputed, and are recognized in the Board's opinion (R. 388-389). The union's Petition for Consent Election filed on July 16, 1954 (G.C. Ex. 2, R. 2) described the unit as including "department managers" in petitioner's Binghamton store. The particularity with which the petition described the employees included and excluded leaves no doubt that the union was fully acquainted with the personnel involved. The certified list of eligible voters (G.C. Ex. 4, R. 10) listed 28 employees described as "department heads," including DuFour and Felker, out of a total of 83 in the bargaining unit. It was stipulated between petitioner, the General Counsel and the union that the list "was agreed upon by the union and the employer and used by the Board as the eligibility list for said election." (R. 42-43). The election was held on August 17, 1954 (R. 43) and DuFour voted in it without challenge (R. 303). Subsequently the Regional Director issued a tally of ballots showing that the union had won (G.C. Ex. 9, R. 13), and on August 25, 1954, a certification of the union as the bargaining agent (G.C. Ex. 10; not printed). All of the remarks by DuFour concerning which complaint is made in this case were made between the time that the union filed its petition and the issuance of the certification.

Under this state of facts, the following questions are presented:

First, can petitioner be held responsible in any way for words spoken in private conversation by an employee eligible to vote in a Board election, when those words are admittedly not regarded by their hearers as coercive?

Second, is a union which has petitioned the Board to hold an election in a unit including retail store department heads, and which has agreed on a list of eligible voters containing the name of DuFour as a department head, estopped to deny that at the time of the petition and the election DuFour was acting as a protected employee in expressing his opinion on union matters?

Third, did the use by the Regional Director of an eligibility list including department heads and the certification of the results of the election based thereon constitute a ruling by the Board that the persons who voted were eligible employees, at least until such time as the Board took steps to set aside that finding in some lawful manner?

The broad sweep of employees' rights under Section 8(c) of the amended Act and the First Amendment to the Constitution is illustrated by the recent case of *N.L.R.B.* v. *Babcock & Wilcox Company* (1956), 351 U.S. 105, where this court said at page 113:

> "No restriction may be placed on the employees' right to discuss self-organization among themselves, unless the employer can demonstrate that a restriction is necessary to maintain production or discipline."

In the present case it has not been argued—and it could not plausibly be argued—that petitioner could impose censorship on DuFour or any eligible employee to "maintain production or discipline." Petitioner therefore had no right to interfere with DuFour's remarks. *It is intolerable that the employer should be held liable for words which it had absolutely no power to control.* Yet, that is the inevitable result of the decisions below.

Prior to the enactment of the Labor Management Relations Act in 1947 such a problem did exist. It arose from the fact that this Court felt compelled by the language

of the National Labor Relations Act to hold that a foreman could be both a representative of management and an employee entitled to organize under the protection of the Act—though it was not contended in that case that he occupied both positions at the same moment and by the same act. *Packard Motor Car Company* v. *N.L.R.B.* (1947), 330 U.S. 485. The difficulties to be expected were well summarized by Mr. Justice Douglas in his dissenting opinion, 330 U.S. at p. 497:

> "If foremen were to be included as employees under the Act, special problems would be raised—important problems relating to the unit in which the foremen might be represented. Foremen are also under the Act as employers. That dual status creates serious problems. An act of a foreman, if attributed to the management, constitutes an unfair labor practice; the same act may be part of the foreman's activity as an employee. In that event the employer can only interfere at his peril."

One of the primary purposes of the Taft-Hartley Act was to resolve this difficulty and to overrule the decision in the *Packard* case. The protection of the Act is limited to "employees." Under amended Section 2(3) the term "employee", as used in the Act, "shall not include * * * any individual employed as a supervisor." The intention thus expressed in the Act's language also appears in the "comprehensive statement" made by Senator Taft at the time the proposed law came before the Senate. On this point he said, 93 Cong. Rec. 3836:

> "It is felt very strongly by management that foremen are part of management; that it is impossible to manage a plant unless the foremen are wholly loyal to the management. We tried various in-between steps, but *the general conclusion was that they must either be a part of management or a part of the employees.* It was proposed that there be separate foremen's unions not affiliated with the men's unions, but

> it was found that that was almost impossible; that there was always an affiliation of some sort; that foremen, in order to be successful in a strike, must have the support of the employees' union. A plant can promote other men to be foremen if necessary. The tie-up with the employees is inevitable. *The committee felt that foremen either had to be part of management and not have any rights under the Wagner Act, or be treated entirely as employees*, and it was felt that the latter course would result in the complete disruption of discipline and productivity in the factories of the United States." (Emphasis added.)

The decisions below cannot be reconciled with this purpose of the amended Act. Under them DuFour is simultaneously a member of the bargaining unit who is entitled to participate in the employees' deliberations concerning conditions of employment, and a member of management for whom petitioner is responsible. He is entitled to free speech on union matters under Section 8 (c) of the Act and the First Amendment, but his exercise of this right in private conversations is held to impose legal liability on petitioner. His conduct is thus at the same time both protected and unlawful. Furthermore, petitioner is compelled to bargain with a unit containing a person adjudged by the Board to be a supervisor, contrary to Section 14(a) of the Act. In short, the decisions represent a complete negation of the division between management representatives and employees that Senator Taft said was a primary purpose of his bill. The practical result will be to discourage consent elections, because the agreement that a given individual shall be considered as an employee will henceforth be used by the union when advantageous and repudiated when disadvantageous, as in the present case.

Not only is the present decision contrary to the intention of the Labor Management Relations Act, but it is contrary

to the decision of the Third Circuit in *N. L. R. B.* v. *James H. Matthews & Co.*, (CCA 3rd 1946), 156 F. 2d 706, on substantially identical facts. In that case, as here, a consent election was held under the supervision of the Board's regional representative, and no objection was made to the inclusion in the unit of the three assistant foremen later alleged to be supervisors. In spite of this absence of objection, the union subsequently brought charges of unfair labor practices based in part on certain anti-union statements made by these three employees. The court modified the Board's order so as to eliminate the charges based upon these statements, saying (156 F. 2d at p. 709):

> "*We cannot protect the right of these voters to discuss merits or demerits of a particular proposed bargaining agent and in the same breath declare the employer responsible, under the Act, for what these eligible voters say to each other.* Of course, it is true that the Board has responsibility for the administration of the National Labor Relations Act and that private individuals cannot interfere with the Board's exercise of its statutory function. But the arrangements for this election were carried on under Board auspices. The men concerned were on the list of voters. We do not think that after the election the Company can be held responsible for what some of those voters have said to each other on the theory that their statements constitute unfair labor practice." (Emphasis added.)

There are two ways by which this shocking result may be avoided. The Court should, we submit, hold that the union is estopped to deny that DuFour was an employee. The Court should also hold that the Regional Director's certification of the result of the election, based on the votes of DuFour and the 27 other department heads, constituted a ruling by the Board as to their status which is binding until set aside.

The Board has obliquely recognized the justice of petitioner's first contention by assuming *arguendo* that the union is estopped (R. 389). But even if the union were not estopped, it is still true that the Board made a determination of DuFour's status as an "employee" on which petitioner was both entitled and obligated to rely. We admit that the Board may at any time set aside such determination *for the future*. Our contention is that it may not set aside such determination *retroactively*.

The decision below establishes a completely unworkable rule, which is contrary to the intent of the Act, contrary to the First Amendment, and contrary to the well considered opinion of the Court of Appeals for the Third Circuit in the *Matthews* case. It presents an important problem in the interpretation and administration of the labor laws which should be decided by this Court.

III. The National Labor Relations Board's finding of wrongful discharge, in violation of Section 8(a)(3) of the National Labor Relations Act, is not supported by substantial evidence on the Record considered as a whole, because it ignores the actual intent of Petitioner's Management and is based on a holding that the undisputed facts advanced by Petitioner as economic grounds for the discharges are not in the opinion of the Board adequate.

In order to justify a finding of wrongful discharges and an order of reinstatement under Section 8(a)(3) of the Act, the General Counsel must show by substantial evidence that the management personnel responsible for the discharges (1) had knowledge of the union activity of the discharged employees and (2) intended to discharge them on account of such activity. For the reasons set forth above, the knowledge and intent must be that of the persons con-

cerned with the discharges, not of some alleged supervisory employee who had no connection with them.

The opinion of the Court below is grounded on a contrary assumption. The Court holds that the requisite knowledge and intent may be supplied by imputing to petitioner's management the state of mind of a person who was assumed by all concerned to be a non-management employee, but who is later found by the Board to be a supervisor. To this proposition the Court devotes the first and greater part of its opinion (App. 12-A to 19-A).

As a secondary alternative, the Court alleges that there was other evidence in the record to support the Board's refusal to accept petitioner's evidence of economic grounds for the discharges (App. 19-A). It is noteworthy that the principal argument originally advanced by the Court as to Felker was based on a misunderstanding of the Record, and it was withdrawn after the error was pointed out in a petition for rehearing (Compare App. 19-A with App. 24-A). In its amended opinion, the Court admits that Felker had been found unsatisfactory prior to the commencement of any union activity, but concludes that this fact was nullified by his appointment as head of the toy department in July 1954 (App. 24-A). This conclusion ignores the undisputed facts that Felker's appointment in the toy department was an annual event, to compensate for seasonal decline of sales in his own department (R. 113, 138-141), and that when he was thus reappointed on July 1, 1954 the store had not yet received orders to eliminate his job (R. 233).

The Court's alternative basis for a finding of wrongful discharge in each case finally comes down to the abruptness of the discharges and their timing (App. 20-A and 24-A). Lacking affirmative evidence of illegal motivation, the court

thus ultimately relies on disapproval of petitioner's personnel policy. That is not enough. The very case cited by the Court below, *E. Anthony & Sons* v. *N. L. R. B.*, (C.A. D.C. 1947) 163 F. 2d 22, demonstrates the failure of the record here to support a Sec. 8(a)(3) violation. In the *Anthony* case the court found actual knowledge by management of the employees' union activities, management espionage on such activities, and strong opposition to the union by company officials, in addition to the abruptness of the discharges. None of these additional facts exists in this case.

We are aware of the burden placed upon us in arguing here the lack of substantial evidence to support the award, after an unfavorable decision by the Court of Appeals. We believe, however, that the present is one of the cases, admittedly few, where the substantial evidence rule "appears to have been misapprehended or grossly misapplied." *Universal Camera Corp.* v. *N. L. R. B.* (1951), 340 U.S. 474, 491.

The Court below has sustained the Board only by substituting imputations in place of factual findings of knowledge and intent. We submit that certiorari should be granted so that this Court may determine for itself the sufficiency of the evidence to support a finding of wrongful discharge.

IV. The National Labor Relations Board's finding of interference, restraint and coercion, in violation of Section 8(a)(1) of the National Labor Relations Act, is not supported by substantial evidence on the record considered as a whole, because it is based on two joking or casual inquiries which were clearly non-coercive.

In addition to the finding of wrongful discharge, the Board and the Court below also found interference, re-

straint and coercion in violation of Section 8(a)(1) of the Act. Both the Board and the Court expressly based this finding on store manager Rumble's questioning of employees Shoudy, Dino and Marold (R. 401; App. 20-A and 24-A). The two incidents relied on may be briefly described.

The entire description of the incident involving Shoudy and Dino is contained in the following testimony by Shoudy (R. 199):

> "As I remember it, Mr. Dino and I were in the department and Mr. Rumble walked up to us and in a casual manner said to us, 'What do you hear about the union?' And I turned to him and I said, 'Not much,' and he said, 'Well have you been to any meetings?' I said, 'Oh, one or two. Why?' And he just asked me; he says, 'Oh, I was just curious as to what went on.' I said, 'We just talked about the good and bad working conditions of the store and what the union can do to help them.' Then he says, 'Well, do you think they can do enough for you to join?' I says, 'I haven't decided.' And that ended it."

The other incident was described by Dorothy Marold in her testimony. She said that she walked into Mr. Rumble's office and "he said something like this: 'Did you join the union,' or 'What do you know about the union,' or something to that effect." (R. 194). She testified that she did not answer and continued: "He said, 'Do you mean to say they haven't asked you,' and I said, 'No, they didn't.' " She further testified: "He said it rather jokingly, like he might have been talking about it to someone else, at least that is the way I took it." (R. 195).

These two incidents, plus the alleged wrongful discharges of Felker and Witter *after the election*, are the entire basis for the alleged Section 8(a)(1) violation.

We submit that the use of these casual remarks to support a finding of Section 8(a)(1) violation is squarely contrary to the provision of Section 8(c) that the expressing of any views "shall not constitute *or be evidence* of an unfair labor practice" if they contain no threat or promise of benefit. The statutory language originated in HR 3020, concerning which the House Committee said (House Report No. 245, 80th Cong., First Session, p. 33):

> "This means that a statement may not be used against the person making it unless it, standing alone, is unfair within the express terms of Sections 7 and 8 of the amended Act."

Such use of casual inquiries is directly contrary to prior decisions of the Courts of Appeals construing the amended Act. Typical of them is *N. L. R. B.* v. *Associated Dry Goods Corp.*, (CA 2d 1954) 209 F. 2d 593, where the court said, page 595:

> "In this Circuit the case of *N. L. R. B.* v. *Montgomery Ward & Co.*, 192 F. 2d 160, holds in effect that an employer may make inquiry of employees during the organization campaign, provided such inquiry and subsequent discussion contains no threat or promises. We adhere to that decision, which is supported by the opinions in *Wayside Press, Inc.* v. *N. L. R. B.*, 9 Cir. 206 F. 2d 862; *N. L. R. B.* v. *England Bros.*, 1 Cir., 201 F. 2d 395; *N. L. R. B.* v. *Arthur Winer, Inc.*, 7 Cir., 194 F. 2d 370, and cases cited therein."

The decree below, finding petitioner guilty of a violation of Section 8(a)(1) of the Act, represents a gross perversion of the Act's intent. We respectfully submit that certiorari should be granted to correct the misconstruction thus placed by the Board and the Court of Appeals on a vital portion of the statute.

CONCLUSION

Wherefore, petitioner respectfully prays that a writ of certiorari issue to review the decree entered by the Court of Appeals for the Second Circuit in the above entitled cause.

Respectfully submitted,

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APPENDIX

A. Constitutional Provision, Statutes and Regulations Involved

First Amendment to the Constitution of the United States

"Congress shall make no law * * * abridging the freedom of speech, * * *."

National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (49 Stat. 449, 61 Stat. 136; 29 USC §151 *et seq.*)

Section 2(3) (29 USC §152(3))

"The term 'employee' * * * shall not include * * * any individual employed as a supervisor, * * *."

Section 7 (29 USC §157)

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a)(3) of this title."

Section 8(a) (29 USC §158(a))

"It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

* * *

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *."

Section 8(c) (29 USC §158(c))

"The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit."

Section 9(b) (29 USC §159(b))

"The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: * * *."

Section 9(c) (29 USC §159(c))

"(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section; the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

* * * *

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board."

* * * *

Section 10(b) (29 USC §160(b))

"Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *."

Section 10(e) (29 USC §160(e))

"The Board shall have power to petition any United States Court of Appeals (including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which application may be made are in vacation, any United States

district court, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall

file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 346 and 347 of Title 28."

Section 14(a) (29 USC §164(a))

"Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

Code of Federal Regulations, Title 29—*Labor, Chapter* 1. *National Labor Relations Board, Part* 102—*Rules and Regulations, Series* 6

Section 102.5

"The term 'regional director' as used in this part shall mean the agent designated by the Board as regional director for a particular region . . ."

Section 102.54(b)

"Where a petition has been duly filed, the employer and any individuals or labor organizations representing a substantial number of the employees involved may, with the approval of the regional director, enter into an agreement providing for a waiver of hearing and a consent election leading to a determination by the Board of the facts ascertained after such consent election, if such a determination is necessary. Such

agreement shall also include a description of the appropriate bargainning unit, the time and place of holding the election, and the payroll to be used in determining which employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the direction and supervision of the regional director. The method of conducting such election and the post-election procedure shall be consistent with that followed by the regional director in conducting elections pursuant to §§102.61 and 102.62."

Section 102.61

"Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the regional director in whose region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to, and approval thereof by, the regional director, whose decision shall be final, have its name removed from the ballot. Any party may be represented by observers of his own selection, subject to such limitations as the regional director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election, the regional director shall cause to be furnished to the parties a tally of the ballots. Within 5 days after the tally of ballots has been furnished, any party may file with the regional director four copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall immediately be served upon each of the other parties by the party filing them, and proof of service shall be made.

"If no objections are filed within the time set forth in this section, if the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held pursuant to §102.62, the regional director shall forthwith issue to the parties a certification of the results of the election, including certification of representatives where appropriate, with the same force and effect as if issued by the Board, and the proceeding will thereupon be closed.

"If objections are filed to the conduct of the election or conduct affecting the results of the election, or if the challenged ballots are sufficient in number to affect the result of the election, the regional director shall investigate such objections, challenges, or both, and shall prepare and cause to be served upon the parties a report on challenged ballots, objections, or both, including his recommendations, which report, together with the tally of the ballots, he shall forward to the Board in Washington, D.C. Within 10 days from the date of issuance of the report on challenged ballots, objections, or both, any party may file with the Board in Washington, D.C. seven copies of exceptions to such report. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof upon each of the other parties, and shall file a copy with the regional director. Proof of service shall be made to the Board. If no exceptions are filed to such report the Board upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record, or may make other disposition of the case.

"The report on challenged ballots may be consolidated with the report on objections in appropriate cases.

"If exceptions are filed, either to the report on challenged ballots, objections, or both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial material issues with respect to the conduct or results of the election, the

Board may decide the matter forthwith upon the record, or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent of the Board to issue and cause to be served upon the parties, a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of §§ 102.56, 102.57, and 102.58, insofar as applicable. Upon the close of the hearing, the agent conducting the hearing, if directed by the Board, shall prepare and cause to be served upon the parties a report resolving questions of credibility, and containing findings of fact, and recommendations to the Board, as to the disposition of the challenges or objections, or both, if it be a consolidated report. The agent conducting the hearing shall forward to the Board in Washington, D.C., the notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exceptions, documentary evidence, all of which, together with the objection to the conduct of the election or conduct affecting the results of the election, the report on such objections, the report on challenged ballots, and exceptions to the report on objections or to the report on challenged ballots, and the record previously made, together with his report, if any, shall constitute the record in the case. In any case in which the Board has directed that a report be prepared and served; any party may within 10 days from the date of issuance of the report on challenged ballots, objections, or both, file with the Board in Washington, D.C., seven copies of exceptions to such report. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof upon each of the other parties, and shall file a copy with the regional director. Proof of service shall be made to the Board. If no exceptions are filed to such report the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record, or may make other disposition of the case. The Board shall thereupon proceed pursuant to § 102.60.

"In any such case in which the Board, upon a ruling on challenged ballots, has directed the regional director to open and count such ballots and to issue a revised tally of ballots, and no objection to such revised tally is filed by any party within 5 days after the revised tally of ballots has been furnished, the regional director shall forthwith issue to the parties certification of the results of the election, including certification of representatives where appropriate, with the same force and effect as if issued by the Board. The proceeding shall thereupon be closed."

Code of Federal Regulations, Title 29—*Labor, Chapter* I *National Labor Relations Board, Part* 101—*Statement of Procedure*

Section 101.18

"The Board has devised and makes available to the parties two types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent election agreement, followed by Regional Director's certification, and consent election agreement, followed by Board certification. Forms for use in these informal procedures are available in the Regional Offiices."

• • • •

"(b) The consent election agreement followed by a Board determination provides that disputed matters following the agreed upon election, if determinative of results shall be the basis of a formal decision by the Board instead of an informal determination by the Regional Director. Thus that it provided that the Board, rather than the Regional Director, makes the final determination of questions raised concerning eligibilty, challenged votes and objections to the conduct of the election. Thus, if challenged ballots are sufficient in number to affect the results of the count, the

Regional Director conducts an investigation and issues a report on the challenges instead of ruling thereon. Similarly, if objections to the conduct of the election are filed within 5 days after issuance of the tally of ballots, the Regional Director likewise conducts an investigation and issues a report instead of ruling upon the validity of the objections. In either event, the Regional Director's report is served upon the parties, who may file exceptions thereto within 5 days with the Board in Washington. The Board then reviews the entire record made and may, if a substantial issue is raised, direct a hearing on the challenged ballots or the objections to the conduct of the election. Or, the Board may, if no substantial issues are raised, affirm the Regional Director's report and take appropriate action in termination of the proceedings. If a hearing is held upon the challenged ballots or objections, all parties are heard and if directed by the Board, a report containing findings of fact and recommendations as to the disposition of the challenges or objections, or both, and resolving issues of credibility, is issued by the hearing officer and served upon the parties who may file exceptions thereto within 10 days with the Board in Washington, D.C. The record made on the hearing is reviewed by the Board with the assistance of its legal assistants and a final determination made thereon. If the objections are found to have merit, the election results may be voided and a new election conducted under the supervision of the Regional Director. If the union has been selected as the representative, the Board or the Regional Director, as the case may be, issues a certification and the proceeding is terminated. If upon a decertification or employer petition the union loses the election the Board or the Regional Director as the case may be certifies that the union is not the chosen representative."

B. Opinions and Decree of the Court of Appeals

Original Opinion filed March 18, 1957 (R. 412-421):

(Those portions of the original Opinion which were modified or deleted by the Opinion on Rehearing are italicized.)

In the United States Court of Appeals
for the Second Circuit
Docket No. 24251
National Labor Relations Board,
Petitioner,

-v-

Montgomery Ward & Co., Inc.,
Respondent.

Before:

CLARK, *Chief Judge*,
LUMBARD AND WATERMAN, *Circuit Judges*.

The National Labor Relations Board petitions, pursuant to 29 U.S.C.A. §160(e), for enforcement of its order, 115 N.L.R.B. 92, directing respondent, Montgomery Ward & Co., Inc., to cease and desist from interfering with its employees at its Binghamton, New York store in the exercise of their rights to organize and bargain collectively under §7 of the National Labor Relations Act and to reinstate with back pay two employees discharged for union activity. Order of enforcement granted.

Theophil C. Kammholtz, General Counsel, Stephen Leonard, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, Samuel M. Singer and Florian J. Bartosic, Attorneys, National Labor Relations Board, Washington, D.C., *for petitioner.*

Charles J. Barnhill and David L. Dickson, Chicago, Ill., and T. W. Madden, New York, N.Y., *for respondent.*

LUMBARD, *Circuit Judge*:

The National Labor Relations Board petitions this court for enforcement of its order of February 29, 1956, that Montgomery Ward (1) cease and desist from (a) discouraging its employees from union membership, by discriminatory hire, discharge and reinstatement; (b) interrogating employees about their union membership, activities or views, and (c) interfering in any manner with their rights to self organization and collective bargaining, in violation of § 8(a)(1) and § 8(a)(3),[1] National Labor Relations Act, 29 U.S.C.A. §158; (2) reinstate employees Frank Felker and Irene Witter, whom the Board found to have been discharged for union activity in violation of §8(a)(3); and (3) post the usual notices of compliance. In its decision, the Board also found that Montgomery Ward had interfered with, restrained, and coerced its employees in violation of §8(a)(1) by store manager Rumble's questioning of certain employees as to union activity.

The central issue in this case is the motive for the discharge of Frank Felker and Irene Witter. The Board, affirming the Trial Examiner, found that the discharge was

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[1] Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce, employees in the exercise of the rights guaranteed in section 7;

* * * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; * * *

for union activity, and rejected Montgomery Ward's claim that it was for reasons of efficiency and economy.

We grant enforcement of the Board's order as the record discloses substantial evidence to support the findings of the Board.

In addition to its mail order business, Montgomery Ward operates many retail stores, including one in Binghamton, New York. A basic store chart sets up the organization of each store. The store manager may hire extra or temporary help only to the extent of sales above a "basic" amount. The Trial Examiner found that the "basic" for the Binghamton store was revised twice a year: the revision most pertinent to this case is that of July 1954.

Felker, an excellent salesman who had won numerous prizes and rewards from the company, had been with Montgomery Ward from 1942 to the date of discharge except for a brief period in 1953 after which he returned to his former position at an increase in salary. He was in charge of the farm equipment department of the Binghamton store at the time of his discharge; on July 1 he was asked to take over the toy department as well.

Witter had no fixed assignment but helped out in various departments of the store, working in about twenty different capacities at one time or another. She worked steadily for Montgomery Ward from 1950 until her discharge on August 19, 1954, two days after the election.

In February 1954, Retail Clerks International Association, Local No. 1687, AFL, filed a petition for certification. By June the Union was engaged in organizing Montgomery Ward's Binghamton store and in an election on August 17, 1954 it succeeded in becoming the bargaining representative. Felker and Witter, the two discharged employees,

were strong advocates of the Union. Both solicited members, particularly during August at the height of the union organizing campaign. Felker was a particularly active solicitor, going so far as to advance money to one fellow-employee to enable him to join the Union.

A few weeks prior to the election, a department head named DuFour, who at the hearing admitted his strong anti-union sentiments, told Felker that "the Company knows all of those that (*sic*) are in favor of the Union and they will lose their jobs." At another time he told Felker that if the Union won, Montgomery Ward would close the store. DuFour also told Witter that if the Union won, she would lose her job because of her union activities. About two weeks before the election, he told an employee named Bright that the company knew who the union people were, and that if the Union won, certain people including Felker, would be automatically squeezed out. This could be done, DuFour is reported by Bright to have said, by "put[ting] two jobs—two departments together and eliminate that job."

In addition several other employees testified that store manager Rumble asked them whether they had joined the Union.

On Monday, August 16, Felker started a week's vacation, but returned on August 17 to vote in the election. On his return to work on August 23 he was told that he had been discharged by order from the New York office. In place of his $70 a week position he was offered a part-time job at $20 a week which offer he refused. About ten days later Felker asked for his dismissal pay from store manager Rumble who said he could not give it to him, adding "Frank, I hope you don't hold anything against me. As far as I am concerned, there was nothing wrong with your work."

Four days after Felker was discharged, Montgomery Ward advertised for "full or part-time help." About a month after the discharge, Montgomery Ward hired a replacement for Felker at $50 per week plus commissions.

Montgomery Ward dismissed Witter on August 19, two days after the election. The day of Witter's dismissal, DuFour had commented on the fact that she was wearing a union button and said, "I wouldn't have anything to do with the Union or anybody in it, if I were you." At 6:00 that evening, she was told she was being released because she was on a "non-basic payroll" and couldn't be carried any longer, presumably because the store was not earning enough over the basic requirements. Store manager Rumble later testified she was discharged because her work was unsatisfactory. About two weeks after her discharge Montgomery Ward hired a replacement for Witter.

In explanation of the discharge of Felker, Montgomery Ward contended that some time between March and June it had been decided by the regional operating manager and the district manager that the farm equipment and toy departments should be combined with the paint department, because it was concluded that the sales for the farm equipment department during the coming half-year would fall off. This amalgamation eliminated one department head and the Company claimed it was necessary to choose between McGraw, who headed the paint department and Felker. Since McGraw was a better all-around man, the Company decided it would discharge Felker, who was earning $70 per week plus commissions, and retain McGraw at $60 a week, allowing him an extra $20 a week out of basic for a part-time man.

The Company explained Witter's discharge on the ground that it was necessary to reduce the payroll and that Witter's shortcomings as an employee made her the appropriate person to cut.

The Trial Examiner found that Felker and Witter had been discharged not because of the revision in the basic store organization, but for their union activities. He also found that Rumble's questions as to union membership constituted an interference with the exercise of employee rights under §7, in violation of §8(a)(1), and that DuFour's questions and threats constituted coercion, also in violation of §8(a)(1).

The Board affirmed the decision as to Rumble, but held that because DuFour had voted in the representation election, he was probably considered by the employees as one of them rather than as part of management. Hence, DuFour's statements to them could not be considered as management coercion. However, the Board held that despite his voting in the election, his supervisory status could be considered in determining whether his knowledge and attitude could be imputed to Montgomery Ward in determining the motivation for the discharges. The Board thereupon found that he was a supervisor with power to hire and fire.

Montgomery Ward argues that a finding of a §8(a)(3) violation requires a specific finding as to the motive of the supervisory employees who actually did the firing and that in making this finding, DuFour's knowledge, attitude and statements could not be considered. If DuFour's role be disregarded, Montgomery Ward contends the Board's other findings fail to sustain its order.

Montgomery Ward rests its case against the use of DuFour's statements to establish its motive on two grounds:

1. The Board had held that because of DuFour's membership in the unit and his participation in the election, Montgomery Ward would not be held responsible for

DuFour's anti-union statements so as to hold the company liable for violation of §8(a)(1). It was therefore inconsistent to impute DuFour's knowledge and actions to the company to show a violation of §8(a)(3).

2. By agreement of the Union and Employer, and with the approval of the Regional Director of the National Labor Relations Board, DuFour was included in a unit of all employees except supervisors and voted in the election. The Board was therefore estopped from considering him as a supervisor and imputing any of his activities to Montgomery Ward.

We do not agree with these contentions.

We find nothing inconsistent in the Board's decision that DuFour's statements could not be used to charge Montgomery Ward with coercion and intimidation in violation of §8(a)(1) but could be used to determine Montgomery Ward's knowledge and attitude. The Board's theory that no §8(a)(1) charge could be grounded on DuFour's questions and threats was based on the fact that he was considered by the employees as one of them and not part of management. "Thus, [his statements] do not tend to intimidate them." These subjective employee reactions have no bearing on whether he actually was an agent of management, for he could easily have been very high in management circles without the other employees having any notion of this. DuFour's supervisory status is clear, and, regardless of how the employees reacted to DuFour's statements, his knowledge of union activities and statements as to employer motivation were properly imputed to Montgomery Ward.

Moreover, as the Board rightly concluded, the fact that DuFour was included in the bargaining unit and voted, with the approval of the Union and N.L.R.B. Regional

Director, does not estop the Board from considering his supervisory status, for neither the Board nor the Regional Director ever made a definitive determination of his status. The Regional Director merely approved the arrangement for the election as agreed to by the Union and the employer. It is most unlikely that such approval either did, or even could as a practical matter, involve any careful study of supervisory status. In many prior cases before the Board, it has held that it will not be estopped from inquiring into supervisory status by the approval of one of its Regional Directors, see, *e.g., The Steel Products Engineering Co.*, 103 N.L.R.B. 565, 576, (1953); *Valentine Sugars, Inc.*, 102 N.L.R.B. 113, 114 n. 3 (1953). This position seems to us to be entirely sound, especially where the fact and effect of voting have no necessary connection with the issues in the Board proceeding—as noted *supra*, the fact that DuFour voted in the election has no necessary connection with his also being an agent of management for purposes of §8(a)(3). *N. L. R. B.* v. *Jas. H. Mathews & Co.*, 156 F. 2d 706, 708-709 (3 Cir. 1946), cited by Montgomery Ward, is thus distinguishable for there the employer was charged, *inter alia*, with coercion in violation of §8(a)(1). On that issue, the Board found, as in the case now before us, that the supervisory employee's participation in the representation election was relevant in determining whether the other employees would consider the supervisor's statements as an attempt at employer coercion. Thus to hold that the Regional Director's approval estops the Board would be to ignore the realities of the situation.

Nor can the agreement between the Union and employer preclude either the Board from examining an employee's supervisory status, or the Union from bringing a complaint for discriminatory discharge based on such a supervisory

employee's knowledge and expression of employer attitudes. *Brewster Pateros Processors*, 73 N.L.R.B. 833, 834-35 (1947). Again, the fact that a supervisory employee votes in an election is not conclusive on the question of whether he is "an arm of management" in determining management's knowledge and motivation in a §8(a)(3) proceeding, and whether the Union consented to his voting is immaterial.

But the Board's finding of Montgomery Ward's motivation for the discharges does not rest solely on the evidence concerning DuFour's knowledge of Union activities and statements of employer intention which we find the Board is at liberty to impute to the company.

There was other evidence in the record to support the Board's refusal to adopt the explanation for the discharge adduced by the company.

As to Felker, Montgomery Ward contended that the amalgamation of the two departments, Felker's and McGraw's, in the interest of economy, was decided upon in June at the latest, and that Felker was an unsatisfactory employee. But in July Felker was asked to take over the toy department. If the decision to discharge him had been made in June, and on the ground alleged, it would seem that he should have been discharged then, rather than immediately after the successful election. Nor does any notice or warning of discharge seem to have been given. The abruptness of a discharge and its timing are persuasive evidence as to motivation, see E. Anthony & Sons v. N. L. R. B., 163 F. 2d 22, 26-27 (D.C. Cir. 1947), *particularly where another time—June—seems more appropriate if the Company's alleged reason were the real one. And, if in June his discharge was imminent, it does not seem plausible that in July he would be assigned to head another department. As to his incompetence, it is undisputed that he was an outstanding salesman.* The flaws in

his work as department head on which Montgomery Ward purports to rely, were carefully considered by the Board, which concluded that there was little substance to them. With this we agree.

Finally, if the purpose of Felker's discharge was to save money, it is difficult to understand why an advertisement for employees was inserted just a few days after the discharges, and why a new employee was soon hired to replace an outstanding salesman like Felker at a salary only $20 lower.

As to Witter, the suddenness of the discharge immediately after the election and the almost immediate replacement support the Board's finding. Montgomery Ward urges many instances of incompetence; none of them seemed to have any but a very slight basis.

Finally, the Board's finding that store manager's Rumble's questioning of the employees regarding their Union affiliations constituted sufficient interference in the particular factual setting of this case to charge Montgomery Ward with a violation of §8(a)(1), *does not seem to be disputed.*

We conclude that the Board's order is supported by substantial evidence and should be enforced.

Decree Enforcing an Order of the National Labor Relations Board entered April 5, 1957, (R. 434-437):

This cause came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated February 29, 1956. The Court heard argument of respective counsel on January 11, 1957, and has considered the briefs and the transcript of record filed in this cause. On March 18, 1957, the Court, being fully advised in the premises, handed down its decision enforcing the said order. In conformity therewith it is hereby

Ordered, Adjudged And Decreed that the Respondent, Montgomery Ward & Co., Incorporated, Binghamton, New York, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Retail Clerks International Association, Local Union No. 1687, AFL-CIO, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment.

(b) Interrogating its employees concerning their union membership, union activities, or views about Retail Clerks International Association, Local Union No. 1687, AFL-CIO, or any other labor organization, in a manner constituting interference, restraint or coercion in violation of Section 8(a)(1) of the National Labor Relations Act, as amended, (hereinafter referred to as the Act).

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist Retail Clerks International Association, Local No. 1687, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which the National Labor Relations Board has found will effectuate the policies of the Act:

(a) Offer to Frank J. Felker and Irene Gladys Witter immediate and full reinstatement to their former, or substantially equivalent positions, without prejudice to seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them, in the manner provided in the section of the Intermediate Report of the Trial Examiner of the National Labor Relations Board, dated April 18, 1955, entitled "The Remedy."

(b) Preserve and make available to the Board, or its agents, upon request, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the rights of employment under the terms of this Decree.

(c) Post at its store in Binghamton, New York, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director of the National Labor Relations Board, for the Third Region, Buffalo, New York, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the aforesaid Regional Director, in writing, within ten (10) days from the date of this Decree what steps the Respondent has taken to comply herewith.

Charles E. Clark
Judge, United States Court of Appeals for the Second Circuit

J. Edward Lumbard
Judge, United States Court of Appeals for the Second Circuit.

Opinion on Denial of Petition for Rehearing Filed April 15, 1957 (R. 438-439):

National Labor Relations Board,
Petitioner,

vs.

Montgomery Ward & Co., Inc.,
Respondent.

PETITION FOR REHEARING

Before CLARK, Chief Judge, LUMBARD and WATERMAN, Circuit Judges.

The petition for rehearing questions certain factual conclusions in the original opinion. Although upon re-examination of the record, we agree with some of the petitioner's contentions, we see no reason to change our original conclusion; since DuFour was properly found to be a supervisor, his knowledge of union activities and expressions of management intention can be used by the trial examiner in considering Montgomery Ward's employer knowledge and motivation in connection with the discharges.

We do, however, wish to make the following corrections:

1. Change first two sentences of the last paragraph on page 861 to read as follows:

"In June 1954, Retail Clerks International Association, Local No. 1687, AFL, started to organize Montgomery Ward's Binghamton store, filed a petition for certification on July 16 and in an election on August 17 succeeded in becoming the bargaining representative."

2. Page 867, the third full paragraph is to be replaced by the following two paragraphs:

"As to Felker, Montgomery Ward contends that in July it decided that Felker's and McGraw's departments were to be combined and that since Felker was an unsatisfactory employee, Felker was to be dismissed. There was also testimony by Levengood, Montgomery Ward's district manager, that in March Montgomery Ward decided to replace Felker because he was unsatisfactory. But in July, Felker was asked to head the toy department. If his work was so unsatisfactory that his discharge was contemplated as early as March and decided upon in July, it seems unlikely that he would be assigned to head another department in early July. Nor does any notice or warning of discharge seem to have been given. The abruptness of a discharge and its timing are persuasive evidence as to its motivation. See *E. Anthony & Sons* v. *N. L. R. B.*, 163 F. 2d 22, 26-27 (D.C. Cir. 1947).

"As to Montgomery Ward's allegations that Felker was incompetent, it is undisputed that he was an outstanding salesman. The flaws in his work as department head on which Montgomery Ward purports to rely, were carefully considered by the Board, which concluded that there was little substance to them. With this we agree."

3. The original opinion also erred in stating that Montgomery Ward did not dispute the Board's finding as to store manager Rumble's questioning. But in any event the Board's finding was warranted by the evidence. We therefore delete from the next to the last paragraph of the

opinion, page 868, the words "does not seem to be disputed" and replace them with "is warranted by the record."

Petition for rehearing denied, and original opinion modified.

CHARLES E. CLARK
J. E. LUMBARD
STERRY R. WATERMAN

Office Supreme
AUG
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 264

MONTGOMERY WARD & CO., INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Brief for Petitioner in Reply

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QUESTIONS PRESENTED

The petition stated four questions presented by this record. (Pet. 3). The first two raised fundamental issues in the interpretation of the National Labor Relations Act as amended. The last two questioned whether the Board's findings were supported by substantial evidence.

The brief in opposition omits the first two questions. It restates the last two and seeks to confine the issues to them (Resp. Br. 2, 9). It thus ignores the most important reasons why the petition was filed.

Petitioner reiterates here its reliance on Questions 1 and 2 in the petition as grounds for the allowance of the writ.

ARGUMENT

Contrary to respondent's argument, this is not a case involving only, or even primarily, the question of substantial evidence. Fundamentally, it is a case involving the question whether the National Labor Relations Board can ignore the clear distinction between supervisor and employee, laid down in Sections 2(3) and 14(a) of the Act (Pet. App. 1-A, 5-A), and compel an employer at his peril to silence the private remarks of an employee entitled to vote as a member of the bargaining unit.

Respondent asserts that even without the remarks by Du Four (the department head who voted in the election as an employee) "the other circumstances surrounding the dismissals *would have furnished* ample basis for the findings of discrimination." (Resp. Br. 10, emphasis added). That is not the point. The Court of Appeals may not, as it has here, hold that it will sustain the Board on the basis of findings which the Board might have, *but did not*, make. So to hold is to substitute the Court's judgment for the Board's. The Court must accept the Board's findings and enforce or deny enforcement on that basis.

Respondent's own brief shows that the Board failed to make the findings which respondent now says it could—and inferentially should—have made.

1. Respondent says that "the Board could reasonably infer that his [Du Four's] statements reflected management's views and that he communicated his knowledge of employee union activity to management." (Resp. Br. 10). By this means respondent seeks to ascertain "the motives of the supervisors who actually did the discharging." (Resp. Br. 8).

Whether or not the Board could so "infer", which petitioner denies, the fact is that it did not so "infer" at all. Instead, it sought to substitute a rule of law—that a voting supervisor's knowledge and intent, but not his acts, will be *legally imputed* to management—for the finding of management motives required under Sec. 8(a)(3) (R. 391). Whether the Act permits the Board thus to substitute a rule of law for a finding on "a pure question of fact" (Resp. Br. 10) is the issue under the first question presented. (Pet. 3).

2. Respondent says that petitioner argues that "the Board was estopped from considering Du Four as an arm of management" (Resp. Br. 11), and dismisses this supposed petitioner's argument by saying that "agreements between private parties cannot restrict the jurisdiction of the Board." (Resp. Br. 12).

This argument misunderstands the issue.

Petitioner did not and does not argue that "the Board was estopped." Petitioner's argument is that the Board made a determination of Du Four's status on which petitioner was obligated to rely *until it was set aside for the future*. (Pet. 21). That is a very different thing.

This is not a case where parties are seeking to restrict the jurisdiction of the Board. It is a case where the Board is seeking to restrict its own jurisdiction by hiding behind a so-called private agreement. The Act commits to the Board, not private parties, the conduct of elections (Sec. 9(c), Pet. App. 2-A). The Act requires the Board, not private parties, to determine the bargaining unit (Sec. 9(b), Pet. App. 2-A). The Board's agent conducted the election involved in this case pursuant to its procedures and regulations (Pet. App. 5-A to 10-A), and certified the results "with the same force and effect as if issued by the

Board." (Pet. App. 9-A). Determination of those eligible to vote as members of the bargaining unit was a necessary part of such conduct of the election. The Board had no power to delegate this or any other statutory duty irrevocably to private parties. *N.L.R.B.* v. *Southeastern Rubber Mfg. Co.* (C.A. 5th, 1954), 213 F. 2d 11, 15. It cannot now escape the consequences of its own past exercise of statutory jurisdiction in the case of Du Four.

Determination of the question of membership in the bargaining unit was inherent in the Board's conduct of the election. Whether such determination may now be retroactively ignored is one of the basic issues under the second question presented in this case (Pet. 3).

Respectfully submitted,

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FILED
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No. 264

In the Supreme Court of the United States

OCTOBER TERM, 1957

MONTGOMERY WARD & CO., INC., PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The original opinion of the court below as modified by its supplemental opinion denying petitioner's petition for rehearing (Pet. App. 11A-25a) is reported at 242 F. 2d 497. The findings of fact, conclusions of law, and order of the Board (R. 339-409) are reported at 115 NLRB 645.

JURISDICTION

The decree of the court below was entered on April 5, 1957. Petitioner's petition for rehearing was denied

on April 15, 1957 (R. 440). The petition for a writ of certiorari was filed on July 12, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's finding that petitioner, in violation of the National Labor Relations Act, discriminatorily discharged two employees for union activities.

2. Whether substantial evidence supports the Board's finding that petitioner violated Section 8(a)(1) of the Act by questioning employees concerning their union membership and activities.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*), are appended to the Petition, pp. 1A-5A.

STATEMENT

I. The Board's Findings of Fact, Conclusions, and Order

The Board found that petitioner (also referred to as "the Company") violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging two employees because of their activities on behalf of the Union[1] and further violated Section 8(a)(1) by questioning employees concerning union membership and attendance at union meetings. The evidentiary support for these findings may be summarized as follows:

A. *The unfair labor practices*

At the outset of a drive to organize the approximately 80 employees in petitioner's store at Binghamton, New

[1] Retail Clerks International Association, Local Union No. 1687, AFL.

York, in June 1954, the Union promptly gained the strong support of employees Frank Felker and Irene Witter (R. 392-393,352-353, 359, 375; 108-111, 151-153, 154, 160). Both Felker and Witter signed membership applications on June 2 or 3, thereafter solicited other employees to join the Union, and attended union meetings (R. 392, 398, 352-353, 359, 375; 108-111, 151-153). At the height of the organizing campaign, between July 16 (when the Union filed a representation petition with the Board) and August 17 (when an election was held in the store), Felker was particularly active in soliciting members, going so far as to lend money to one employee to enable him to join the Union (R. 359, 388, 392; 110, 2-9, 13-14).

During this preelection period, Store Manager Rumble questioned three employees about their union sympathies, membership, and attendance at Union meetings (R. 393; 193-194, 198-199). Approximately two weeks before the election, Department Head DuFour (whose supervisory status is discussed *infra*, pp. 6-8) told an employee that the Company "knew who the head union members were and that they would be taken care of after the election" (R. 103). DuFour also informed him that, if the Union won the election, "certain individuals in the store would be automatically squeezed out," specifically naming Felker as an employee whom petitioner would "squeeze" out through "job elimination, that they could put two jobs two departments together and eliminate that job" (R. 393, 356; 101-103). On about August 6, DuFour warned Felker that "the Company knows all of those that are in favor of the Union and they will lose their jobs," and a few days before the election again told Felker that should the Union be successful the Company would "close the

store" (R. 393, 357; 112, 113). In addition, DuFour repeatedly advised Witter not to "get mixed up" with the Union or she would lose her job (R. 393, 399, 357, 376; 154-157).

Despite DuFour's admonitions, neither Felker nor Witter made any secret of their pro-union views. When asked by DuFour what he thought about the Union, Felker replied that the Union was a good thing because of the protection it would afford the employees (R. 393, 356-357; 111, 304). In reply to DuFour's query whether she had signed a Union card, Witter answered in the affirmative, adding that she had "waited a long time to see this happen" (R. 398-399, 376; 154, 304). In addition, Witter not only conversed openly with a Union organizer at the store under the observation of Store Manager Rumble, but also informed Assistant Store Manager Brancato before the election: "I intend to vote, and you know I intend to vote 'yes'" (R. 375, 355, 399, n. 22; 152-154, 160, 68-69, 211).

In the election on August 17, the Union received a majority of the votes (R. 353; 13-14). For the next two days, Witter wore her union button in the store and on the afternoon of the 19th answered a comment by DuFour by stating: "Yes, and I am proud of that button. I waited a long time to wear one" (R. 399, 376; 304, 155-157, 195). DuFour replied: "I wouldn't have anything to do with the Union or anybody in it, if I were you" (*ibid.*). A few hours later, without prior warning or notice, Witter was discharged by Assistant Store Manager Brancato (R. 399, 376; 157-159). Answering her question as to the reason for the discharge, Brancato said: "Well, I just can't carry you on the payroll any longer. 'You are on a non-basic

payroll" (R. 376; 159). Felker, who had begun a week's vacation on August 16 (returning to the store to vote in the election on August 17), was likewise summarily discharged by Brancato when he reported for work on August 23 (R. 393, 360; 114-117). Store Manager Rumble's parting statement to Felker was: "Frank, I hope you don't hold anything against me. As far as I am concerned, there was nothing wrong with your work" (R. 360; 117).

In an attempt to explain the discharges at the hearing in this case, the Company asserted that Felker's job was eliminated because his department was consolidated with another and that Witter lost her job because of a reduction in force (R. 393-394, 399-400). However, the Company failed to transfer Felker to another available job and advertised for new employees a few days after the discharges, hiring a replacement for Witter within two weeks and for Felker within a month (R. 393-394, 397-398, 400, 378, n. 12; 77, 186-187, 59, 73, 77-78, 205, 246-247). The Company also claimed numerous deficiencies in the work of both Felker and Witter (R. 394-397, 399-400, 361-375, 376-377). After carefully considering the evidence with respect to the alleged shortcomings, the Board found them to be either slight or without substance (R. 394-397, 399-400, 361-375, 376-377). It was undisputed that Felker, who had been in the Company's farm equipment department for approximately 12 years, had received several prizes and awards for outstanding sales ability (R. 392, 360-361; 117-122, 60-61, 208, 289, 52). And Witter, who had worked in many of the Company's departments intermittently since 1942 and continuously for four years before her discharge, had previously been recommended by the management as

"an honest and industrious * * * and satisfactory employee", who was "interested in her work" (R. 398, n. 21; 15, 331, 192-193, 185-186).

After "close examination of the record and particularly because the reasons offered by [petitioner] in justification of the discharges" did "not stand up under scrutiny," the Board concluded that petitioner discharged these two employees, not because of economic considerations, but in order to "rid itself of active union proponents" and that its conduct was accordingly violative of Section 8(a)(3) and (1) of the Act (R. 400-401). The Board further concluded that Store Manager Rumble's questioning of employees concerning union membership and activities, viewed against the background of the discriminatory discharges, was violative of Section 8(a)(1) of the Act (R. 401).[2]

B. *The supervisory status of DuFour*

Following the Union's representation petition, the Company and the Union waived a hearing by entering into a stipulation for a consent election which set forth the voting unit as "all employees" in the store, excluding supervisors (R. 388; 5-9). An employee list, furnished by the Company and used for determining voting eligibility, included the name of DuFour, who was permitted to vote in the election without challenge (R. 388-389; 10, 303). Since the Board's Regional Director approved the election agreement between the parties, no hearing was held in the representation pro-

[2] The Board found merit in petitioner's contention that a statement by Assistant Store Manager Brancate to Water was made jokingly, and accordingly dismissed the complaint insofar as it alleged a violation of Section 8(a)(1) in this respect (R. 401).

ceeding and the Board had no occasion to determine DuFour's status (R. 388, 389). The record in the instant complaint proceeding showed, however, that DuFour directed the work of other employees and effectively recommended the hiring and discharge of individuals in his department and that the exercise of his authority was not merely routine or clerical (R. 388, 350-351; 48, 69-70, 79-82, 83-86, 87-92, 93-100, 104, 171, 199-200, 301). Concluding that "the mere fact that DuFour was permitted to vote in the election by agreement of the parties is not the equivalent of a determination of his status by the Board" (R. 389), the Board found that DuFour had a status different from other department heads in the store and was in fact a supervisor within the meaning of Section 2(11) of the Act (R. 388).

A majority of the Board did not adopt the Trial Examiner's finding that petitioner violated Section 8(a)(1) of the Act because of Supervisor DuFour's interrogation and threats (R. 390-391, 404-407, 379-381). Being of the view that statements by supervisors are unlawful only when they reasonably tend to restrain or coerce employees, the Board concluded that there was no intimidation here because DuFour was permitted to vote in the election and the employees would consider him "one of themselves" (R. 390-391). However, the Board unanimously held (R. 390-391, 404-407) that petitioner was not entitled to have the evidence as to DuFour's conduct excluded from the Board's consideration in determining the issues with respect to petitioner's knowledge of the union activities of Felker and Witter, and the reason for their discharge. In this connection, the Board stated (R. 390-391), the important fact was that DuFour was actually "an arm of

management" and "an employer is chargeable with knowledge of union activities acquired by such a supervisor."

C. The Board's order

The Board's order (R. 401-404, 408-409) requires petitioner to cease and desist from the unfair labor practices found and from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights under Section 7 of the Act. Affirmatively, the Board ordered petitioner to reinstate Felker and Witter with back pay and to post appropriate notices.

II. The Decision of the Court Below

The court below sustained the Board's findings and enforced its order.

In holding that substantial evidence supported the Board's finding that Felker and Witter were discharged because of union activities, the court rejected petitioner's contention that the Board could not take into account DuFour's knowledge of their union activities and his threats of loss of employment in determining the motives of the supervisors who actually did the discharging (Pet. App. 16A-19A). Stating that "DuFour's supervisory status is clear" (Pet. App. 17A), the court concluded that the Board was entitled to take his conduct and statements into consideration in determining the Company's motives for dismissing the two employees. The court further held that, for the reasons stated by the Board, there was no inconsistency between the Board's action in this respect and the Board's refusal to find petitioner liable for a violation of Section 8(a)(1) on the basis of DuFour's activity

(Pet. App. 17A). The court also held that the inclusion of DuFour in the voting unit did not estop the Board from considering his actual status in the instant proceeding, as neither the Board nor the Regional Director made any definite determination of his status in the representation proceeding (Pet. App. 17A-19A).

In addition, the court found (Pet. App. 19A-20A, 24A) other evidence in the record to support the Board's refusal to adopt petitioner's explanations for the discharges, noting particularly the timing of the discharges, the absence of prior warning or notice, the quickly following advertisement for new employees, the almost immediate replacement, and the lack of substance in petitioner's assertions of incompetence.

And, finally, the court found "warranted by the record" (Pet. App. 20A, 24A-25A) the Board's conclusion that, "in the particular factual setting of this case," Store Manager Rumble's questioning of employees concerning union affiliations was violative of Section 8(a)(1).

ARGUMENT

1. The central issue in this case, as the court below observed, is whether petitioner discharged the two employees for union activity or for reasons of efficiency and economy. The court below, on the basis of the evidence summarized above, pp. 2-6, upheld the Board's findings of unlawful discrimination as adequately supported by the record. Essentially, petitioner's case here is (Pet. 10-21) that the Board's findings are not supported by substantial evidence on the record as a whole and that the court below erred in affirming those findings. Such an issue, as petitioner

acknowledges (Pet. 23), normally raises no question warranting further review by this Court.

More specifically, petitioner's attack upon the adequacy of the evidence supporting the Board's decision rests on the following subsidiary contentions: that the Board's finding of discrimination rests "primarily if not exclusively" on the anti-union remarks of department head DuFour; and that the Board erroneously took those remarks into consideration in determining petitioner's motive for the dismissals since, first, there is no showing that DuFour was representing the views of management and, second, for election purposes the Board had not treated DuFour as a representative of management. Preliminarily, it may be observed that the Board's findings of discrimination do not rest primarily on DuFour's remarks and that, even without those remarks, the other circumstances surrounding the dismissals would have furnished ample basis for the findings of discrimination. But, in any event, since DuFour was in fact a supervisor, as petitioner does not deny, and hence "allied with management" and in a position to know petitioner's real motives (*Packard Motor Co.* v. *National Labor Relations Board*, 330 U.S. 485, 496), the Board could reasonably infer that his statements reflected management's views and that he communicated his knowledge of employee union activity to management. "It must be remembered, in this connection, that the question involved [i.e., of motive] is a pure question of fact; that, in passing upon it, the Board may give consideration to circumstantial evidence as well as to that which is direct; that direct evidence of a purpose to violate the statute is rarely obtainable; and that where the finding of the Board is supported by circumstances from which the

conclusion of discriminatory discharge may legitimately be drawn, it is binding upon the courts * * *." *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. 2d 291, 293 (C.A. 4).

Further, there is no inconsistency between the Board's action in this respect and its refusal to attribute DuFour's remarks to management for the purposes of Section 8(a)(1), which prohibits employer interference and restraint of employees in the exercise of their right under the Act. As the Board stated (R. 390):

> When a supervisor is included in the unit by agreement of the Union and the Employer is permitted to vote in the election, the employees obviously regard him as one of themselves. Statements made by such a supervisor are not considered by employees to be the representations of management, but of a fellow employee. Thus they do not tend to intimidate employees. * * * However, a supervisor, although mistakenly permitted to vote in the election by agreement of the parties, remains an arm of management. To the extent, therefore, that an employer's accountability for the conduct of a supervisor does not depend on employee reaction, the employer's responsibility for the supervisor's actions is not affected by the fact of inclusion in the unit. Hence, an employer is chargeable with knowledge of union activities acquired by such a supervisor.

Petitioner's further argument, that the Board was estopped from considering DuFour as an arm of management for purposes of Section 8(a)(3) since he was permitted to vote in the representation election, is in-

substantial. As the court below found (Pet. App. 17A-18A), "neither the Board nor the Regional Director ever made any definite determination of his status" in the representation proceeding since petitioner and the Union waived a hearing in their consent election agreement. This agreement was an "ordinary, private agreement" (*Sun Ship Employees Ass'n v. National Labor Relations Board*, 139 F. 2d 744, 745 (C.A. 3)) and "agreements between private parties cannot restrict the jurisdiction of the Board" (*National Labor Relations Board v. Walt Disney Productions*, 146 F. 2d 44, 48 (C.A. 9)).[3] Contrary to petitioner's suggestion (Pet. App. 15-17), moreover, the circumstances that DuFour's name was improperly included, without objection by the Union, on the voting eligibility list furnished by petitioner, did not alter the fact that he was actually, under the Act, a supervisor. Statutory requirements are " 'not subject to waiver through action or inaction of parties to a labor controversy,' for the Board's duty to enforce the public policy underlying the Act transcends private rights and ordinary principles of contract law" (*National Labor Relations Board v. Southeastern Rubber Mfg. Co.*, 213 F. 2d 11, 15 (C.A. 5)).

The decision below is not in conflict with the decision of the Third Circuit in *National Labor Relations Board v. James H. Matthews & Co.*, 156 F. 2d 706, 708-709 (63 NLRB 273, 280-281, 283), upon which petitioner relies. The *Matthews* case, like the instant case, held that the anti-union statements of supervis-

[3] See also *National Labor Relations Board v. Lake Superior Lumber Corp.*, 167 F. 2d 147, 150 (C.A. 6). Cf. *Wallace Corp. v. National Labor Relations Board*, 323 U.S. 248, 254, affirming 141 F. 2d 87, 91 (C.A. 4).

ors voting in an election do not constitute coercion in violation of Section 8(a)(1), but did not deal with the question of whether such statements may properly be considered for purposes of Section 8(a)(3).

2. Only an issue of fact is raised by petitioner's assertion (Pet. 23-25) that its questioning of employees concerning union membership and activities was non-coercive. The court below sustained as "warranted by the record" (Pet. App. 20A, 24A-25A) the Board's finding that "in the particular factual setting of this case" such interrogation constituted coercive interference with employee rights in violation of Section 8(a)(1) of the Act. That the subjects of the questioning may have characterized petitioner's manner as casual or joking is without consequence, for the coercive character of employer conduct can not be said to depend upon the "degree of introspective perception" held by the employees (*National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U.S. 219, 231).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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